VOLUME 46, NUMBER 6 LEGISLATIVE RESEARCH COMMISSION DECEMBER 1, 2019

# ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, November 15, 2019.

## MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet on December 16, 2019, at 1:00 p.m. in room 129 Capitol Annex.

**ARRS Tentative Agenda - 1769** Updated as needed online

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| Title | | Chapter | Regulation |
|---|---|---|---|
| 806 | KAR | 50: | 155 |
| Cabinet, Department, Board, or Agency | | Office, Division, Board, or Major Function | Specific Regulation |

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**The following agenda may not take into consideration all of the administrative regulations that may be deferred by promulgating agencies. Deferrals may be made any time prior to or during the meeting.**
***Updated: November 13, 2019 at 10:00 a.m.***

# Administrative Regulation Review Subcommittee
## TENTATIVE Meeting Agenda
## Monday, December 16, 1 p.m.
## Annex Room 129

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**2. REGULATIONS FOR COMMITTEE REVIEW**

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**
**Education Professional Standards Board**
**Educator Preparation**
016 KAR 006:031. Repeal of 016 KAR 006:030.

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031 KAR 004:120. Additional and emergency precinct officers. (Not Amended After Comments) (Deferred from April)

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**Personnel Cabinet, Classified**
101 KAR 002:210 & E. Plan Year Handbook for the Public Employee Health Insurance Program. ("E" expires 05-09-2020)

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103 KAR 025:060. Temporary vendors and transient merchants.

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103 KAR 026:030. Optometrists, oculists and opticians.
103 KAR 026:050. Common carriers.
103 KAR 026:110. Motor carrier repair and replacement parts.

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103 KAR 027:100. Motor vehicles, manufactured homes, mobile homes, and trailers.
103 KAR 027:220. Restaurant transactions.

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103 KAR 028:090. Tangible personal property; security instrument enforcement.

**Sales and Use Tax; General Exemptions**
103 KAR 030:270. Oil and gas extraction machinery.

**Selective Excise Tax; Alcoholic Beverages**
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**Real Estate Appraisers**
201 KAR 030:130. Education provider, instructor, and course. (Deferred from August)

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM**
**Kentucky Board of Emergency Medical Services**
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**Department of Fish and Wildlife Resources**
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301 KAR 003:100. Special commission permits.

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**Office of the State Veterinarian**
**Livestock Sanitation**
302 KAR 022:010. Authority to inspect, test, identify, remove and dispose of livestock, poultry, and fish.
302 KAR 022:020. Restriction of transportation of livestock, poultry, and fish.
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**Industrial Hemp**
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**Division of Mine Reclamation and Enforcement**
**Surface Effects of Noncoal Mining**
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405 KAR 005:032. Permit requirements.

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405 KAR 008:030. Surface coal mining permits.

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**Department of Workers' Claims**

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**Division of Oil and Gas**

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805 KAR 001:060. Plugging wells. (Amended After Comments) (Deferred from November)
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805 KAR 001:110. Underground injection control. (Amended After Comments) (Deferred from November)
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805 KAR 001:170. Content of the operations and reclamation plan. (Amended After Comments) (Deferred from November)
805 KAR 001:180. Production reporting. (Amended After Comments) (Deferred from November)
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805 KAR 007:101. Repeal of 805 KAR 007:100.

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805 KAR 009:011. Repeal of 805 KAR Chapter 009. (Deferred from September)

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806 KAR 007:021. Repeal of 806 KAR 007:020.

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806 KAR 009:265. Rental vehicle agent license.

**CABINET FOR HEALTH AND FAMILY SERVICES**

**Office of Inspector General**

**Division of Healthcare**

**Health Services and Facilities**

902 KAR 020:036. Operation and services; personal care homes. (Amended After Comments) (Deferred from August)
902 KAR 020:280. Prescribed pediatric extended care centers.
902 KAR 020:450. Ambulatory infusion agencies.

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**CABINET FOR HEALTH AND FAMILY SERVICES**
**Department for Community Based Services**
**Division of Protection and Permanency**
**Child Welfare**
922 KAR 001:330 & E. Child protective services. ("E" expires 05-11-2020) (Comments Received; SOC ext. due 12-13-2019)

## ADMINISTRATIVE REGULATION REVIEW PROCEDURE
## Overview for Regulations Filed BEFORE noon, July 15, 2019
## (See KRS Chapter 13A for specific provisions)

**Filing and Publication**

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing and comment period information, regulatory impact analysis and tiering statement, fiscal note, federal mandate comparison, and incorporated material information. Those administrative regulations received by the deadline established in KRS 13A.050 shall be published in the Administrative Register.

**Public Hearing and Public Comment Period**

The administrative body shall schedule a public hearing on proposed administrative regulations, which shall not be held before the 21st day or later than the last workday of the month of publication. Written comments shall also be accepted until the end of the calendar month in which the administrative regulation was published.

The administrative regulation shall include: the place, time, and date of the hearing; the manner in which persons may submit notification to attend the hearing and written comments; that notification to attend the hearing shall be sent no later than 5 workdays prior to the hearing date; the deadline for submitting written comments; and the name, position, mailing address, e-mail address, and telephone and fax numbers of the person to whom notification and written comments shall be sent.

The administrative body shall notify the Compiler, by letter, whether the hearing was held or cancelled and whether 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 month of publication.

A transcript of the hearing is not required unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

**Review Procedure**

After the public hearing and public comment period processes are completed, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or 30 days after being referred by LRC, whichever occurs first.

## ADMINISTRATIVE REGULATION REVIEW PROCEDURE
## Overview for Regulations Filed AFTER noon, July 15, 2019
## (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.

**Public Hearing and Public Comment Period**

The administrative body shall schedule a public hearing on a proposed administrative regulation, which shall be held between the 21st and the last workday of the month following the month of publication. Written comments shall also be accepted until the end of the calendar month in which the public hearing was scheduled.

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.

The administrative body shall notify the Compiler, by letter, 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 administrative 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 administrative regulation is deferred or found deficient, the administrative regulation shall be considered in effect upon adjournment of the appropriate jurisdictional committee meets or 90 days after being referred by LRC, whichever occurs first.

# EMERGENCY ADMINISTRATIVE REGULATIONS

**STATEMENT OF EMERGENCY**
**101 KAR 2:120E**

This emergency administrative regulation is necessary for compliance with the requirement to enhance the state employee adoption benefit program pursuant to Executive Order 2019-787. The enhancements, effective October 22, 2019, increase presently available financial assistance for eligible employees who adopt a special needs child, as defined by KRS 199.555(1) from $5,000 to up to $7,000. The enhancements also increase assistance available for adoption of other children from $3,000 to up to $5,000. The order authorizes promulgation of administrative regulations needed to implement the changes. This administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)3. to meet the deadline to implement the provisions of Executive Order 2019-787. An ordinary amendment to the administrative regulation is not sufficient because the effective date of the amendment would be past the effective date directed by the order. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
THOMAS B. STEPHENS, Secretary, Personnel Cabinet

**PERSONNEL CABINET**
**(Emergency Amendment)**

**101 KAR 2:120E. Incentive programs.**

RELATES TO: KRS 18A.202, 199.555(1)
STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(d), 18A.202(1), EO 2019-787
EFFECTIVE: October 22, 2019
NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(d) requires the Secretary of Personnel to promulgate administrative regulations to implement work-related incentive programs for state employees. KRS 18A.202 authorizes the secretary to establish work-related incentive programs for state employees. Executive Order 2019-787 authorizes the secretary to promulgate administrative regulations for state employee adoption benefits. This administrative regulation establishes the requirements for an employee suggestion system incentive program and a state employee adoption benefit program.

Section 1. Employee Suggestion System. (1) Eligibility.
(a) An employee with status in the classified service or an employee governed by KRS Chapter 16 may be recognized and rewarded for submitting a suggestion that results in the improvement of state service or in the realization of financial savings by the state.
(b) A suggestion shall be a positive idea which:
1. Explains how to improve methods, equipment, or procedures;
2. Reduces time or cost of a work operation;
3. Creates a safer work environment;
4. Increases revenue; or
5. Improves relationships with or services for the public.
(2) Administration.
(a) The secretary shall establish and maintain standard operating procedures to administer the Employee Suggestion System.
(b) Before January 1 of each calendar year, each cabinet or agency head shall appoint, in writing, an employee suggestion coordinator.
(c) Once an employee submits a suggestion to his or her cabinet or agency, the coordinator shall review the request to ensure it meets the above eligibility requirements and the requirements set forth in the standard operating procedures.
(d) If the suggestion meets eligibility and procedural requirements, the request shall be forwarded for review and approval as follows:
1. To the coordinator of the affected agency, which is the agency implementing the suggestion, if applicable;
2. To a designated evaluator in the affected agency, who shall be a person with expertise in the area under consideration. The evaluator shall review the suggestion to determine whether the suggestion shall be implemented;
3. To a budget representative in the affected agency, who shall determine if sufficient funds are available to fund the award; and
4. To the appointing authority or his or her designee of the affected agency.
(e) The decision of the appointing authority or his or her designee shall be final, except as provided by subsection (4) of this section.
(f) Upon approval and implementation of the employee's suggestion, the agency that implemented the suggestion shall provide notice of the approval and implementation to the suggester's agency coordinator, to include total cash savings. If cash savings is unknown at the time of implementation, the affected agency shall provide documentation of cash savings within one (1) year and one (1) month of the implementation date to the suggester's agency coordinator.
(3) General provisions.
(a) A suggestion shall be eligible for an award only after legislative action or administrative regulation changes, if required, have been completed which shall be the responsibility of the agency that desires to implement the suggestion.
(b) The following suggestions shall not be eligible for a cash award:
1. A suggestion that falls within the scope of the duties of the suggester. "Scope of duties" shall include a specific set of tasks assigned to the suggester or set forth in the position description or job specification of the suggester upon submission of the suggestion;
2. A suggestion which includes a proposal to perform routine maintenance operations or follow manufacturer's recommendations;
3. A suggestion to make a change which has been documented in writing as already under consideration by those administratively responsible;
4. A suggestion which corrects an error or condition that exists because established procedures were not followed; or
5. A suggestion made by a coordinator.
(c) If more than one (1) suggester makes significant contributions to the idea, the suggestion may be submitted jointly, and an award granted shall be divided equally between or among the suggesters.
(d) 1. The first suggestion received shall take precedence over all future suggestions having the same purpose.
2. If two (2) or more similar suggestions are received on the same day, an award granted shall be divided equally between or among the suggesters.
(e) The suggester shall be notified in writing of the status of the suggestion within ninety (90) calendar days of receipt by the suggester's agency coordinator and every sixty (60) days thereafter.
(f) A suggestion shall be considered to be active and eligible for an award until the suggester is notified in writing that the suggestion has been approved, denied, or closed.
(g) If the suggestion is denied or closed, the suggester's agency coordinator shall notify the suggester in writing stating the reason it was denied or closed.
(4) Reconsideration.
(a) A suggester may request reconsideration of a suggestion that has not received approval from the cabinet or agency.
(b)1. The suggester shall request reconsideration in writing and shall set forth the basis for the request.
2. a. The request shall be filed with the suggester's agency coordinator within thirty (30) calendar days of the date that written notice of denial is provided to the suggester.
b. If the thirtieth day falls on a day that the cabinet or agency office

is closed during regular work hours, the request may be filed on the next work day.

(c) Within thirty (30) calendar days, the cabinet or agency shall act on the request for reconsideration and notify the suggester in writing of the reason for the decision.

(d) If an eligible suggestion is denied or closed and conditions under which it was originally considered have changed, the suggester may resubmit the suggestion.

(5) Payment.

(a) An award of cash payment shall be in accordance with KRS 18A.202.

1. The cash payment shall be calculated based upon the amount saved over the period of one (1) year minus implementation costs.

2. a. The payment for the award shall be issued by the Personnel Cabinet.

b. Funds for payment shall come from the agency or agencies implementing the suggestion, if sufficient funds are available to fund the award.

c. If applicable, the funding agency may interaccount other agencies implementing the suggestion for a proportionate share of the total award amount.

(b) 1. If a suggestion has been approved by the appointing authority or his or her designee and has resulted in a financial savings to the state, the suggester shall be compensated in an amount of ten (10) percent of the amount saved over the twelve (12) month period following implementation of the suggestion, with a minimum of $100 and a maximum of $2,500.

2. If a suggestion approved by the appointing authority or his or her designee results in an intangible improvement in state service, the suggester shall be compensated in the amount of $100.

3. Upon the suggester's receipt of compensation, the suggestion shall become the property of the state [~~Administration. An employee with status in the classified service or an employee governed by KRS Chapter 16 may be recognized and rewarded for submitting a suggestion that results in the improvement of state service or in the realization of financial savings by the state.~~

~~(a)1. The employee suggestion system council, headed by the chairperson designated by the Secretary of Personnel, shall:~~

~~a. Ensure proper evaluation of each suggestion;~~

~~b. Review and act upon, by approval or denial, a suggestion presented to the council by a cabinet or agency; and~~

~~c. Reconsider denials as set forth in subsection (4) of this section.~~

~~2. A designated coordinator may present recommended suggestions to the council and request that the council vote on suggestions.~~

~~3. The council may defer action for up to one (1) year and one (1) month pending documentation of cash savings.~~

~~4. The council shall receive administrative support from the Personnel Cabinet.~~

~~5. The council shall prepare an annual report to be submitted to the Secretary of Personnel that shall include the number of suggestions received and the status of each suggestion.~~

~~6. The council shall meet:~~

~~a. At a minimum on a quarterly basis; or~~

~~b. Upon the request of the council chairperson or a majority of the coordinators.~~

~~(b) Each cabinet secretary or agency head shall designate, in writing, the appointment of a coordinator who shall also serve on the council. The coordinator shall receive suggestions and establish and maintain internal procedures to ensure appropriate evaluation of suggestions.~~

~~(c) The coordinator shall present suggestions recommended for approval by the cabinet or agency to the council for consideration.~~

~~(2) Eligibility.~~

~~(a) A suggestion shall be a positive idea which:~~

~~1. Explains how to improve methods, equipment or procedures;~~

~~2. Reduces time or cost of a work operation;~~

~~3. Creates a safer work environment;~~

~~4. Increases revenue; or~~

~~5. Improves relationships with or services for the public.~~

~~(b) The suggestion shall:~~

~~1. Present an improvement in state service or function;~~

~~2. Explain how the change would be accomplished;~~

~~3. Define what benefits would be realized by the state, particularly in terms of efficiency, effectiveness, safety, economy, conservation of energy resources, or public relations;~~

~~4.a. Be made by an employee to the employee's cabinet or agency; or~~

~~b. Be forwarded from other coordinators if the suggestion affects the coordinator's agency;~~

~~5. Within ninety (90) working days of implementation by the agency, be:~~

~~a. Submitted on the Employee Suggestion Form, P-35; and~~

~~b. Accompanied by exhibits or illustrations as needed;~~

~~6. Be practical, useful, and constructive; and~~

~~7. Be eligible for an award only after legislative action or administrative regulation changes, if required, have been completed which shall be the responsibility of the agency that desires to implement the suggestion.~~

~~(c) The following suggestions shall not be eligible for a cash award:~~

~~1. A suggestion that falls within the scope of the duties of the suggester and which the suggester has the authority to initiate or implement without other administrative approval. "Scope of duties" shall include a specific set of tasks as set forth in the position description of the suggester upon submission of the suggestion;~~

~~2. A suggestion related to a particular problem given to an employee to solve within the scope of the employee's duties and responsibilities;~~

~~3. A suggestion made by a member of the council, a cabinet, or agency suggestion review committee;~~

~~4. A suggestion which includes a proposal to perform routine maintenance operations or follow manufacturer's recommendations;~~

~~5. A suggestion to make a change which has been documented in writing as already under consideration by those administratively responsible; or~~

~~6. A suggestion which corrects an error or condition that exists because established procedures were not followed.~~

~~(d) If more than one (1) suggester makes significant contributions to the idea, the suggestion may be submitted jointly, and an award granted shall be divided equally between or among the suggesters.~~

~~(e)1. The first suggestion received shall take precedence over all future suggestions having the same purpose.~~

~~2. If two (2) or more similar suggestions are received on the same day, an award granted shall be divided equally between or among the suggesters.~~

~~(f) A suggestion shall be considered a confidential communication among the suggesters and the employees and officers whose responsibility it is to process, investigate, review, or evaluate suggestions.~~

~~(3) General provisions.~~

~~(a) The cabinet or agency head shall establish an internal system for receipt, evaluation, and reconsideration of employee suggestions. This system shall, at a minimum, include the following:~~

~~1. A method to notify the suggester in writing that the suggestion has been received and to notify the suggester in writing of a change in the status of the suggestion;~~

~~2. A method to document the original suggestion, evaluation, and action taken; and~~

~~3. A method to prepare and present documentation of a suggestion for recommendation to the council.~~

~~(b)1. Eligibility of a suggestion shall be evaluated according to the circumstances existing upon submission of the suggestion.~~

~~2. An evaluation shall be completed by a person with expertise in the area under consideration.~~

~~3. The results of the evaluation shall be recorded on the Evaluation of Employee Suggestion Form, Form P-36, and the form shall be dated and signed by the individual making the evaluation.~~

~~(c)1. The suggester shall be notified in writing of the disposition of the suggestion within ninety-five (95) calendar days of receipt by~~

~~the coordinator.~~

~~2. If all parties involved agree, an extension of time shall be granted if extenuating circumstances exist.~~

~~3. A suggestion shall be considered to be active and eligible for an award until the suggester is notified in writing that the suggestion has been approved or denied.~~

~~4. If a suggestion will not be implemented, the coordinator shall notify the suggester in writing stating the reason it was not implemented.~~

~~5.a. If an eligible suggestion is not adopted and conditions under which it was originally considered have changed, the suggester may request reevaluation by the cabinet or agency.~~

~~b. The request shall:~~

~~(i) Be in writing;~~

~~(ii) Be evaluated by the next level of supervision;~~

~~(iii) Be received by the agency within one (1) year from the date of rejection; and~~

~~(iv) Include information regarding the change in conditions.~~

~~(d) If a suggestion is approved and implemented by the cabinet or agency, the suggester's coordinator shall recommend approval of the suggestion to the council.~~

~~1. The recommendation shall contain:~~

~~a. The suggestion as completed by the suggester on the Employee Suggestion Form, P-35;~~

~~b. The evaluation forms completed according to the criteria set forth in this administrative regulation; and~~

~~c. A statement of actual or projected cost savings using generally accepted accounting principles.~~

~~2. Upon receipt of the council's decision, the chairperson of the council shall send written notification of the council's action to the suggester's coordinator and the coordinator shall then provide written notification to the suggester regarding the decision.~~

~~3. If an eligible suggestion is denied by the council, the suggestion shall remain on active file with the council for a period of one (1) year from the date of denial.~~

~~(e) Award of cash payment shall be in accordance with KRS 18A.202.~~

~~1. The cash payment shall be calculated based upon the amount saved over the period of one (1) year minus implementation costs and shall be determined according to generally accepted accounting principles.~~

~~2.a. The award check shall be issued by the agency where the suggester is employed.~~

~~b. Funds for payment shall come from the agency or agencies implementing the suggestion.~~

~~c. If applicable the agency issuing the check may interaccount other agencies implementing the suggestion for a proportionate share of the total award amount.~~

~~3.a. If a suggestion may result in financial savings to the state and proper documentation of cost savings has not yet been obtained, the council shall request that each agency implementing the suggestion maintain records which document the cost savings for a period not to exceed one (1) year from the date of implementation.~~

~~b. Documentation shall be conducted according to generally accepted accounting principles.~~

~~c. This cost savings analysis shall be forwarded by the coordinator to the council chairperson within thirty (30) work days of completion of the analysis.~~

~~(f)1. If a suggestion has been approved by the council and has resulted in a financial savings to the state, the suggester shall be compensated in an amount of ten (10) percent of the amount saved over one (1) calendar year, with a minimum of $100 and a maximum of $2,500.~~

~~2. If a suggestion approved by the council results in an intangible improvement in state service, the suggester shall be compensated in the amount of $100.~~

~~3. Upon the suggester's receipt of compensation, the suggestion shall become the property of the state.~~

~~(4) Reconsideration.~~

~~(a) A suggester may request reconsideration of a suggestion that has not received approval from the cabinet or agency within ten (10) work days of the date that written notice of denial is received by the suggester.~~

~~(b)1. The suggester shall request reconsideration in writing and shall set forth the basis for the request.~~

~~2.a. The request shall be filed with the coordinator within ten (10) days of the date of the denial.~~

~~b. If the tenth day falls on a day that the cabinet or agency office is closed during regular work hours, the request may be filed on the next work day.~~

~~(c) Within thirty (30) work days, the cabinet or agency shall act on the request for reconsideration and notify the suggester in writing of the reason for the decision.~~

~~(5) Council review.~~

~~(a)1. A suggestion may be reviewed by the council on its own motion, or upon request of the suggester.~~

~~2. If a suggestion has been reconsidered and denied by the cabinet or agency, the suggester may request a review by the council.~~

~~a. The suggester shall request review within thirty (30) days of receipt of the written notification of the outcome of the reconsideration and shall set forth in writing the basis for the request.~~

~~b. (i) The request shall be filed in the office of the employee suggestion system chairperson within the thirty (30) day period.~~

~~(ii) If the 30th day falls on a day that the chairperson's office is closed during regular work hours, the request may be filed on the next work day.~~

~~(b) The council shall complete the review within ninety (90) calendar days of the date that the chairperson receives the request for review.~~

~~(c) The council chairperson shall notify the agency head of the council's findings and its recommendation concerning the suggestion's implementation or denial~~].

Section 2. Adoption Benefit Program. (1)(a) A state employee who finalizes a legal adoption procedure for the adoption of a child, other than the child of a spouse, between November 1, 1998 and October 21, 2019 [~~on or after November 1, 1998~~], shall be eligible to receive reimbursement for direct [~~actual~~] costs associated with the adoption of a special needs child, as defined by KRS 199.555(1), or any other child.

(b) The eligible employee shall receive:

1. Up to $5,000 in unreimbursed direct costs related to the adoption of a special needs child; or

2. Up to $3,000 in unreimbursed direct costs related to the adoption of any other child.

(2) (a) A state employee who finalized a legal adoption procedure for the adoption of a child, other than the child of a spouse, on or after October 22, 2019, shall be eligible to receive reimbursement of direct costs associated with the adoption of a child.

(b) In addition to or instead of reimbursement of direct costs, a state employee may request and receive a stipend.

(c) The combined total of stipend and reimbursement of direct costs per adoption of a special needs child shall not exceed $7,000.

(d) The combined total of stipend and reimbursement of direct costs per adoption of every other child shall not exceed $5,000[~~Total state funds for this program shall not exceed $150,000 in a fiscal year.~~

~~(2) The eligible employee shall receive:~~

~~(a) Up to $5,000 in unreimbursed direct costs related to the adoption of a special needs child; or~~

~~(b) Up to $3,000 in unreimbursed direct costs related to the adoption of any other child~~].

(3) Unreimbursed direct costs related to the adoption of a special needs child or other child shall include:

(a) Licensed adoption agency fees;

(b) Legal fees;

(c) Medical costs not paid by insurance, Medicaid, or other available resources;

(d) Court costs; and

(e) Other fees or costs associated with child adoption in accordance with state and federal law [~~and after review and approval by the court at the finalization of the adoption~~].

(4) Application for financial assistance shall be made [~~by~~

~~submitting a completed State Employee Adoption Assistance Application~~] to the Secretary of Personnel along with documentary evidence of:

(a) Finalization of the adoption;

(b) Certification by the Secretary of the Cabinet for Health and Family Services that the adopted child is a special needs child, if assistance [~~reimbursement~~] for special needs adoption is sought; and

(c) A copy of an affidavit of expenses with supporting documentation related to the adoption [~~filed with and approved by the court at the finalization of the adoption~~].

(5) If both adoptive parents are [~~executive branch~~] state employees, the application for financial assistance shall be made jointly and the amount of reimbursement of costs and stipend shall be limited to that specified in subsections (1) and [~~subsection~~] (2) of this section.

(6) Upon approval of the application for financial assistance, if sufficient funds are available, the employee's agency shall dispense funds in the amount authorized by the Secretary of Personnel.[~~Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Employee Suggestion Form", P-35, October 2007;~~

~~(b) "Evaluation of Employee Suggestion Form" Form, P-36, February 2010; and~~

~~(c) "State Employee Adoption Assistance Application", May 2015.~~

~~(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.~~]

THOMAS B. STEPHENS, Secretary, Personnel Cabinet

APPROVED BY AGENCY: October 21, 2019

FILED WITH LRC: October 22, 2019 at 2 p.m.

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 requirements for an employee suggestion system incentive program and a state employee adoption benefit program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions and requirements for the various types of incentive programs for state employees.

(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(1)(d) requires the secretary to promulgate administrative regulations for the classified service governing incentive programs. KRS 18A.202 authorizes the secretary to implement incentive programs for state employees by administrative regulation. Executive Order 2019-787 authorizes the secretary to promulgate administrative regulations for state employee adoption benefits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes provisions and requirements for an employee suggestion system incentive program and a state employee adoption benefit 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 employee suggestion section is amended to streamline program administration. The suggestion system council is eliminated in favor of deference to the appointing authority and budget representative for the agency benefitting from a suggestion. Eligibility and award amounts are unchanged.

The adoption benefit section is amended to increase reimbursement of direct costs and stipend not to exceed $7000 for adoption of a special needs child, and an amount not to exceed $5000 for adoption of every other child. Previous benefit amounts were limited to reimbursement of expenses not to exceed $5000 and $3000.

Finally, this administrative regulation is amended to remove forms incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to streamline administration of the employee suggestion system and implement enhancements to the adoption benefit program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is consistent with authority provided in KRS 18A.030(2), 18A.110(1)(d), 18A.202(1), and EO 2019-787.

(d) How the amendment will assist in the effective administration of the statutes: This amendment streamlines administration of the employee suggestion system and implements enhancements to the adoption benefit program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All executive branch employees and their agencies are affected by the adoption benefit program provisions of the regulation, while only KRS Chapter 18A employees and KRS Chapter 16 employees are affected by the employee suggestion system incentive program provisions.

(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.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): For the adoption benefit program, the monetary benefit to eligible employees, borne by their employing agencies, will increase by a maximum of $2000 per adoption.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): For the adoption benefit program, the monetary benefit to eligible employees will increase by a maximum of $2000 per adoption.

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

(a) Initially: There are minimal additional costs anticipated to administer the amendments to this regulation. For the adoption benefit program, the monetary benefit to eligible employees will increase by a maximum of $2000 per adoption.

(b) On a continuing basis: There are minimal additional costs anticipated to administer the amendments to this regulation. For the adoption benefit program, the monetary benefit to eligible employees will increase by a maximum of $2000 per adoption.

(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 for the employee suggestion system. Existing agency funds are used for adoption benefits.

(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 established any fees or directly or indirectly increased 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 NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State executive branch agencies are subject to provisions of this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2), 18A.110(1)(d), 18A.202(1), and EO 2019-787

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? There are minimal additional costs anticipated to administer the amendments to this regulation. For the adoption benefit program, the monetary benefit to eligible employees will increase by a maximum of $2000 per adoption.

(d) How much will it cost to administer this program for subsequent years? There are minimal additional costs anticipated to administer the amendments to this regulation. For the adoption benefit program, the monetary benefit to eligible employees will increase by a maximum of $2000 per adoption.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**STATEMENT OF EMERGENCY**
**105 KAR 1:149E**

Pursuant to KRS 13A.190, the proposed new administrative regulation is an emergency. This emergency administrative regulation establishes the processes and procedures to implement the provisions of 2019 Special Session House Bill 1. An emergency administrative regulation is necessary to provide the processes and procedures to implement 2019 Special Session House Bill 1. This bill was enacted on an emergency basis on July 24, 2019, in order to ensure the financial health of quasi-governmental employers. Pursuant to KRS 13A.190(1)(a), this regulation must be placed into effect immediately in order to meet the deadlines imposed by 2019 Special Session House Bill 1 and to address the emergency declared to protect the financial health of quasi-governmental employers, which is vital to the future of Kentucky. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
DAVID L. EAGER, Executive Director

**FINANCE AND ADMINISTRATION CABINET**
**Kentucky Retirement Systems**
**(New Emergency Administrative Regulation)**

**105 KAR 1:149E. Quasi-governmental employer cessation window.**

RELATES TO: KRS 61.510 to 61.705, 18A.225, 18A.205, 26 U.S.C. 401, 402, 403

STATUTORY AUTHORITY: KRS 61.522(9), 61.645(9)(e)

EFFECTIVE: November 15, 2019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) requires the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 61.510 to 61.705. KRS 61.522(6) permits certain quasi-governmental employers in the Kentucky Employees Retirement System to cease participation of its nonhazardous employees under the provisions and requirements of KRS 61.522(8). The ceased quasi-governmental employer shall pay the full actuarial cost of benefits accrued by its current and former nonhazardous employees through June 30, 2020, except as provided by KRS 61.522(8)(g)4. KRS 61.522(9) requires the Board to promulgate administrative regulations to administer the provisions of the statute. This administrative regulation establishes the temporary procedures and requirements for quasi-governmental employer cessation from participation in the Kentucky Employees Retirement System pursuant to KRS 61.522.

Section 1. Definitions. (1) "Alternative retirement program" means a plan provided by a ceased quasi-governmental employer, which meets the qualification requirements of 26 U.S.C. 401(a) or 26 U.S.C. 403(b), is eligible to receive direct trustee-to-trustee transfers of pre-tax and post-tax contributions, and shall not include a defined benefit plan.

(2) "Ceased employer" means a quasi-governmental employer who, on or after April 1, 2020, but prior to May 1, 2020, submits a resolution to cease participation in Kentucky Employees Retirement System ("KERS"), which is accepted by the board on or before June 30, 2020.

(3) "Employer", for the purposes of this administrative regulation, means a quasi-governmental employer including local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, the Kentucky Higher Education Student Loan Corporation, and any other agency otherwise eligible to voluntarily cease participating in KERS pursuant to KRS 61.522.

(4) "Employer election" means an election by ceasing employers set forth in the resolution to cease participation in KERS regarding whether nonhazardous employees hired prior to June 30, 2020, who began participating in KERS prior to January 1, 2014, will continue to participate in KERS after June 30, 2020. Nonhazardous employees of employers who do not elect for their employees to continue participating in KERS will not accrue additional service credit or benefits with KERS through the ceased employer after June 30, 2020.

(5) "Nonhazardous employee" means a regular full-time employee participating in KERS in a position other than a position classified as hazardous by the board pursuant to KRS 61.592.

Section 2. (1) An employer may request an estimate of the actuarial cost of ceasing participation in KERS of its nonhazardous employees prior to December 31, 2019. The request shall be made by completing the Form 7726, "Request for Estimated Cost of Voluntary Cessation from KERS under KRS 61.522(8)."

(2) Kentucky Retirement Systems (hereafter "Systems") shall provide the estimate of the cost within sixty (60) days of receipt of the Form 7726, however, no estimate shall be required to be provided prior to January 31, 2020.

(3) Systems shall provide the estimate of the cost based on the information currently in its database and projecting the service and creditable compensation of all nonhazardous employees as if they remain employed in a regular full-time position through June 30, 2020.

(4) The estimated actuarial cost of ceasing participation shall not be binding on the Systems.

(5) The employer shall not rely on the estimated actuarial cost of ceasing participation.

(6) Systems shall notify the employer of the administrative cost to process the Form 7726. The administrative cost shall be calculated as follows:

(a) If the number of employees and former employees to be submitted to the actuary for purposes of determining the estimated actuarial cost of cessation equals one (1) to 100 employees, the administrative cost shall be $1,500.

(b) If the number of employees and former employees to be submitted to the actuary for purposes of determining the estimated

actuarial cost of cessation equals 101 or more employees, the administrative cost shall be $4,000.

(7) Systems shall process the Form 7726 after the employer has remitted its payment for the administrative cost.

Section 3. (1) The governing body of an employer seeking to cease participation in KERS through KRS 61.522(8) shall pass a resolution to cease participation and submit the resolution to the board on or after April 1, 2020, but prior to May 1, 2020.

(2) The resolution shall contain the following statements:

(a) That the employer has decided to voluntarily cease participation in KERS;

(b) The employer election and acknowledgement as to whether nonhazardous employees hired prior to June 30, 2020, who began participating in the Systems prior to January 1, 2014, will, as a result of the employer election, either continue to participate or cease earning service credit and benefits after June 30, 2020;

(c) That the employer acknowledges it is unable to rescind the resolution to cease participation after April 30, 2020;

(d) That the employer acknowledges it is subject to the requirements and restrictions of KRS 61.522 and this administrative regulation;

(e) That the employer acknowledges that in order to cease participation in KERS pursuant to KRS 61.522(8), the employer shall pay the actuarial cost of ceasing participation and all administrative costs associated therewith;

(f) That the employer agrees to cooperate with the Systems to educate its employees about the effect of cessation and the employer election on the employees' retirement accounts and the employees' options regarding their retirement accounts;

(g) That the employer shall not mandate, force, or require its employees to take a refund of their accumulated account balance as defined by KRS 61.510(41), or retaliate against its employees who chose not to take refunds of their accumulated account balance as defined in KRS 61.510(41); and

(h) That the employer shall hold the Commonwealth and the Systems, including board members and employees of the Systems, harmless from damages, attorney's fees and costs from legal claims for any cause of action brought by any member or retired member of the ceasing employer related to the cessation of the employer.

(3) The board shall accept the resolution on or before June 30, 2020, in order for the employer to cease participation.

(4) In the event that a resolution to cease participation in the KERS is not received by the board prior to May 1, 2020, the employer shall continue to participate in the KERS and pay the full actuarially determined contributions for fiscal years occurring on or after July 1, 2020.

Section 4. (1) An employer shall file a completed Form 7727, "Actuarial Study for Quasi-Governmental Employer Cessation" with its resolution on or after April 1, 2020, but prior to May 1, 2020, with the executive director of the Systems.

(2) The employer shall submit the following documents with its Form 7727:

(a) Documentation of the alternative retirement program created by or being created by the employer for its employees, such as the determination letter issued by the Internal Revenue Service or a written description of the alternative retirement program;

(b) The employer's most recent five (5) audited financial statements and independent auditor's reports; and

(c) The employer's most recent five (5) Comprehensive Annual Financial Reports, if applicable.

(3) The employer shall submit with its Form 7727, an encrypted electronic file in a format prescribed by the Systems listing each current and former nonhazardous employee, employed in a full-time position as defined by KRS 61.510(21), who was employed during any period the employer participated in KERS, containing:

(a) Full name;

(b) Last known address;

(c) Date of birth;

(d) Social security number or Systems member identification number;

(e) Beginning date of employment;

(f) Date employment ended, if applicable;

(g) Sick leave balance;

(h) Beginning and ending dates of any active duty military service when the employee was not employed by the employer filing the Form 7727, if available; and

(i) Beginning and ending dates of any active duty military service when the employee was employed by the employer filing the Form 7727.

Section 5. (1) The employer shall pay the administrative costs incurred by the Systems for the actuarial study completed in accordance with the Form 7727 to determine the final cost, as well as all other administrative costs incurred for ceasing participation pursuant to KRS 61.522(3)(a).

(2) The employer shall pay $10,000 as a deposit with the Form 7727.

(3) Systems shall place the deposit in a designated account and shall utilize the funds to pay the administrative costs of processing the employer's Form 7727.

(4) Systems shall charge a reasonable fee for its administrative costs associated with processing of the employer's Form 7727 and send an invoice to the employer upon completion of the actuarial study.

(a) Systems shall apply the deposit received pursuant to subsection (2) of this section to any administrative costs incurred by the Systems attributable to the employer's cessation in accordance with KRS 61.522(8).

(b) Following the application of the deposit to the outstanding administrative costs, Systems shall submit an invoice to the employer for the additional administrative costs and the employer shall pay the invoice for the remaining administrative costs within thirty (30) days of the date of the invoice.

(5) If the total administrative cost is less than the deposit paid by the employer, Systems shall credit the remaining balance of the deposit to the employer.

Section 6. (1) Systems shall make reasonable efforts to notify each nonhazardous employee identified on the list provided by the ceased employer that the employer is ceasing participation pursuant to KRS 61.522(8).

(2) For those eligible nonhazardous employees, the Systems shall provide notice informing the employee of the right to request an irrevocable refund, pursuant to KRS 61.522(3)(a)5., of their accumulated account balance as defined in KRS 61.510(41) by submitting a completed Form 1500, "KRS 61.522 60-Day Transfer Request" within sixty (60) days of June 30, 2020 to Kentucky Retirement Systems. The notice shall be sent no later than June 19, 2020.

(a) Systems shall send the notice to the active nonhazardous employees listed by the employer who has filed a Form 7727 on its most recent report required by KRS 61.675 submitted prior to the date the notices are mailed.

(b) The employer shall submit the name and contact information of each nonhazardous employee it hired between the completion of the Form 7727 and before June 30, 2020, within five (5) days of the date the employee begins working for the employer.

(c) A Form 1500 submitted on or before June 30, 2020, shall be void.

(d) A Form 1500 submitted after August 31, 2020, shall be void.

(e) The employee shall be employed by the employer who has filed a Form 7727 on June 30, 2020, to be eligible to request a refund of his accumulated account balance pursuant to KRS 61.522(3)(a)5.

(f) An employee who submitted Form 1500 to the Systems may rescind the form by submitting written notice to the Systems on or before August 31, 2020.

(g) If an employee requests a refund pursuant to KRS 61.522(3)(a)5., the employee's accumulated account balance shall be transferred to the employer's alternative retirement program pursuant to this section even if the employee terminates employment with the employer after June 30, 2020, unless the employee rescinds the Form 1500 on or before August 31, 2020.

(3)(a) The employer shall establish an alternative retirement program on or before August 31, 2020, as provided in KRS 61.522(3)(a)5.

(b) The employer shall submit the final plan documents for its alternative retirement program as well as an affirmative statement that the alternative retirement program does not include a defined benefit plan.

(c) The employer shall submit verification that it has established an alternative retirement program qualified under 26 U.S.C. 401(a) or 26 U.S.C. 403(b) that is eligible to receive direct trustee-to-trustee transfers of pre-tax and post-tax contributions and does not include a defined benefit plan. Systems shall accept one (1) of the following as verification that the employer has established a valid alternative retirement program:

1. A determination letter from the Internal Revenue Service providing that the alternative retirement program established by the employer is a qualified plan pursuant to 26 U.S.C. 401(a) or 26 U.S.C. 403(b) capable of accepting trustee-to-trustee transfers;

2. A letter from the employer's legal counsel certifying that the alternative retirement program satisfies the requirements of 26 U.S.C. 401(a) or 26 U.S.C. 403(b) capable of accepting trustee-to-trustee transfers; or

3. Other reliable verification as determined by the Systems.

(d) Refunds requested pursuant to KRS 61.522(3)(a)5. shall be transferred to the alternative retirement program established by the ceased employer by trustee-to-trustee transfer after August 31, 2020.

1. The alternative retirement program shall accept and separately account for post-tax employee contributions.

2. The ceased employer's legal counsel shall provide written certification that its alternative retirement program shall accept and separately account for post-tax employee contributions.

(e) If the ceased employer fails to establish an alternative retirement program pursuant to paragraph (a) of this subsection, the refund requests pursuant to KRS 61.522(3)(a)5. shall be void. The employees who filed the refund requests pursuant to KRS 61.522(3)(a)5. shall remain members of the system and shall be included in the full actuarial cost.

(4) Former employees of the ceased employer who are currently participating in the State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System, due to employment with a participating agency, shall not be eligible to take a refund of their accumulated account balance until terminating employment with the current participating employer.

(5) Current employees of the ceased employer who are also employed by another employer participating in the State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System shall not be eligible to take a refund of their accumulated account balance until terminating employment with the participating employer.

(6) Current employees of the ceased employer on June 30, 2020, may request a refund pursuant to KRS 61.522(3)(a)5.

(7)(a) Former employees of the ceased employer who are not participating in State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System shall not be eligible to take a refund of their accumulated account balance pursuant to KRS 61.522(3)(a)5.

(b) The account balance of former employees of the ceased employer who are not participating in State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System but who were employed with the ceased employer on June 30, 2020, and who submitted a valid Form 1500 pursuant to this section, shall be transferred to the employer's alternative retirement program unless the employee rescinds the Form 1500 on or before August 31, 2020.

(8) The four (4) percent employer pay credit and applicable interest accrued shall vest as of June 30, 2020, for those nonhazardous employees who began participating on or after January 1, 2014, and who request a refund pursuant to KRS 61.522(3)(a)5.

Section 7. (1)(a) The employer shall continue to file reports and remit employer contributions on all employees in accordance with KRS 61.675 and 105 KAR 1:140 for creditable compensation paid through June 30, 2020.

(b) If the employer elects for nonhazardous employees to continue participation through the employer election, the employer shall continue to file reports in accordance with KRS 61.675 and 105 KAR 1:140. In addition, the employer shall continue to report all applicable pick up installments for pre-tax service purchases pursuant to KRS 61.552(14)(c). However, pursuant to KRS 61.522(8)(d)2., the employer shall not remit employer contributions for nonhazardous employees after June 30, 2020, as those amounts are factored into the cost calculation established by KRS 61.522(7).

(c) The employer shall continue to remit employer contributions for all hazardous employees.

(2)(a) If a member who is an employee of a ceased employer files for disability retirement benefits but does not establish a last day of paid employment prior to June 30, 2020, and does not continue participation, the Systems shall use June 30, 2020, as the member's last day of paid employment.

(b) If a member who is an employee of a ceased employer continues participation because of the employer election and files for disability retirement benefits, the member's last day of paid employment shall be established pursuant to KRS 61.510(32).

(3)(a) The ceased employer shall continue to pick-up payments for installment purchase of service for any employee who is purchasing service pursuant to KRS 61.552(14) and 105 KAR 1:150 through June 30, 2020.

(b) An employee that ceases participation in KERS on June 30, 2020, shall have sixty (60) days from the date of cessation to pay in full any outstanding balance on the installment purchase agreement pursuant to KRS 61.552(14) and 105 KAR 1:150.

Section 8. (1) Employees of a ceased employer shall comply with the provisions of KRS 61.590, 61.625 and 61.637.

(2) Employees of a ceased employer shall terminate employment with all participating employers of the State Police Retirement System, County Employees Retirement System, Kentucky Employees Retirement System and the ceased employer prior to retiring pursuant to KRS 61.590 or taking a refund pursuant to KRS 61.625.

(3)(a) Employees of a ceased employer shall comply with KRS 61.637 and 105 KAR 1:390 after retirement.

(b) The ceased employer shall certify that the employee seeking to retire or take a refund is terminating employment or has terminated employment with no prearranged agreement to return to work for the ceased employer.

Section 9. (1) Employees shall receive service credit for sick leave accrued pursuant to KRS 61.546 as of June 30, 2020.

(a) If the ceased employer participates in a sick leave program established in KRS 61.546 the employer shall report to the Systems the number of hours of each employee's accumulated sick leave as of June 30, 2020.

(b) Systems shall credit the months of sick leave service reported pursuant to this section to the employee's total service credit to determine the ceased employer's actuarial cost.

(c) If the ceased employer elects that nonhazardous employees hired prior to June 30, 2020, who began participating in the Systems prior to January 1, 2014, will continue participation pursuant to KRS 61.522(8)(d), then those employees shall continue to receive service credit for sick leave accrued pursuant to KRS 61.546 after June 30, 2020, while participating through the ceased employer.

(2)(a) Systems shall credit the months of military service pursuant to KRS 61.555 prior to June 30, 2020, and include the months in the calculation of the ceased employer's actuarial cost.

(b) If the ceased employer elects that nonhazardous employees hired prior to June 30, 2020, who began participating in the Systems prior to January 1, 2014, will continue participation pursuant to KRS 61.522(8)(d), then those employees shall continue to be able to obtain military service pursuant to KRS 61.555 if otherwise eligible.

Section 10. (1) The ceased employer shall pay or otherwise

resolve all its invoices and correct all reporting in accordance with KRS 61.675 and 105 KAR 1:140 by July 25, 2020.

(2)(a) Systems shall provide the ceased employer with the amount of the full actuarial cost by sending a notice of actuarial cost and the report of the actuary to the employer.

(b) Systems shall provide the ceased employer with the payment amounts required if the ceased employer elects to pay the actuarial cost in installment payments.

(3)(a) The ceased employer shall elect on the Form 7728, "Payment Election for Quasi-Governmental Employer Cessation" whether to pay the actuarial cost of cessation by lump-sum payment or in installment payments not to exceed thirty (30) years from June 30, 2020.

(b) The Form 7728 shall be received in the retirement office on or before thirty (30) days after the date on which the Systems mailed the notice of actuarial cost and the report of the actuary to the ceased employer.

(c) A ceased employer intending to pay the full actuarial cost by lump-sum shall submit with the Form 7728 documentation of the source of the funds the employer intends to use to pay the full actuarial cost.

(d) A ceased employer intending to pay the actuarial cost by installment payment plan shall submit with the Form 7728 documentation of:

1. Source of funds to pay the installment payments;

2. List of real property owned by the ceased employer, including deeds of conveyance, title, all liens or encumbrances on the real property, and any current written contractual lease or rental agreement of the real property identified;

3. List of liabilities of the ceased employer; and

4. Inventory of all personal property owned by the ceased employer or in which the employer has an interest that may be used as collateral by the employer, including chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letters of credit rights, and money.

(4)(a) Ceased employers who elect to pay the full actuarial cost by lump-sum shall make the payment by June 30, 2021, pursuant to KRS 61.522(3)7.

(b) If the lump-sum payment is not received by the Systems at the retirement office on or before June 30, 2021, then the ceased employer shall make installment payments and the payment amount shall be recalculated based upon this adjustment with interest added for fiscal year 2021-2022. The ceased employer shall also remit all outstanding installments payments.

(c) Systems shall notify any ceased employer who has not submitted the lump-sum payment on June 21, 2021, of the impending deadline and the consequences of failing to timely pay.

(5)(a) If the ceased employer elects to pay the actuarial cost of cessation in installment payments, the cost shall be financed by the Systems pursuant to KRS 61.522(8)(g).

(b) If the ceased employer elects for nonhazardous employees who began participating in the Systems prior to January 1, 2014, to continue participating in KERS, and the employer is not projected to pay the full actuarial cost in thirty (30) years, then the Systems shall adjust the payments so that the full actuarial costs are paid at the end of the thirty (30) year period.

(c) If the ceased employer elects for nonhazardous employees who began participating in the Systems prior to January 1, 2014 to cease participating in KERS, and the employer is not projected to pay the full actuarial cost in thirty (30) years, then the employer shall pay the amount financed through the Systems pursuant to KRS 61.522(8)(g)1. and no adjustments shall be made to the monthly payments nor shall additional amounts be charged after the thirty (30) year period.

(6)(a) Interest shall be assigned to the principal amount annually for both lump-sum and installment payment plans beginning on July 1, 2020. A ceased employer who elects to pay the actuarial cost by installments may at any time submit payments towards the remaining balance.

(b) If the employer elects to pay the costs in installment payments, the annual payments beginning on or after July 1, 2020, including interest will be calculated as a set dollar value and then divided into monthly installments.

(c) If the ceased employer submits more than the required payments for a fiscal year, the total cost will be reduced but the monthly installment amounts will remain unchanged because the monthly amounts are based upon the set dollar value of the annual payments. Pursuant to KRS 61.522(8)(g), interest amounts are separate from total cost and interest and interest attributable to the actuarial cost will not be calculated until the cost is finalized. However, any early or additional payments may reduce the number of payments required if the full actuarial cost is paid in less than thirty (30) years from June 30, 2020.

(7) Payments made prior to the notice of full actuarial cost shall be credited to the amount and considered early or additional payments pursuant to (6)(c) of this section.

Section 11. (1)(a) If a ceased employer elects to make installment payments, the Systems shall submit invoices to the employer for payments owed, which are not paid through the normal monthly reports.

(b) The employer shall remit payment to the Systems by the due date provided on the invoice.

(2)(a) If a ceased employer that elected to make installment payments is delinquent for ninety (90) days or more from the due date of an outstanding invoice, and the ceased employer elected for nonhazardous employees with participation dates prior to January 1, 2014, to continue participating, then the participation of those employees in KERS through the ceasing employer will be suspended until the ceased employer has remitted the required payments. The employees shall not earn service credit, including service credit purchased pursuant to KRS 61.552, or benefits in KERS through the ceased employer during the suspension period.

(b) Any employee contributions provided to the Systems will be held until the ceased employer remits the required payments.

(3) Systems shall notify the Finance and Administration Cabinet of any ceased employer that is delinquent for ninety (90) days or more in making installment payments pursuant to KRS 61.675(4)(c).

(4) Systems may file an action in Franklin Circuit Court to collect delinquent installment payments and attach general fund appropriations in order to satisfy the payments owed.

Section 12. (1)(a) Current and former employees of the ceased employer shall not be eligible to purchase service credit pursuant to KRS 61.552 after June 30, 2020, unless the current employee has continued participation in KERS because of the employer election.

(b) A current employee of a ceased employer continuing participation in KERS because of the employer election may purchase service credit pursuant to KRS 61.552 even if that service is related to employment with the ceased employer.

(2) Former employees shall not be eligible to purchase service credit related to employment with a ceased employer, pursuant to KRS 61.552 after June 30, 2020.

(3) A person eligible to purchase service credit pursuant to KRS 61.552 related to employment with the ceased employer, must either complete the purchase or enter into a service purchase agreement with the Systems no later than June 30, 2020 unless the individual is a current employee of the ceased employer who has continued participation in KERS because of the employer election.

(4) A person may purchase service credit pursuant to KRS 61.552(20) if the service is not related to employment with the ceased employer, unless the person is a current employee that has continued participation in KERS because of the employer election.

(5) A former employee of a ceased employer who becomes employed with a participating employer after terminating employment with the ceased employer may purchase service credit pursuant to KRS 61.552 that is not related to employment with a ceased employer.

Section 13. If any due date in this regulation or if an installment payment 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 14. Incorporation by Reference. (1) The following

material is incorporated by reference:

(a) Form 7726, "Request for Estimated Cost of Voluntary Cessation from KERS under KRS 61.522(8)," August 2019;

(b) Form 7727, "Actuarial Study for Quasi-Governmental Employer Cessation", November 2019;

(c) Form 1500, "KRS 61.522 60-Day Transfer Request", November 2019; and

(d) Form 7728, "Payment Election for Quasi-Governmental Employer Cessation", November 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: November 15, 2019

FILED WITH LRC: November 15, 2019 at 9 a.m.

CONTACT PERSON: Mark C. Blackwell, Executive Director Office of Legal Services, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8645, fax (502) 696-8801, email Legal.Non-Advocacy@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mark C. Blackwell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the processes and procedures for a quasi-governmental employer participating in the Kentucky Employees Retirement System to voluntarily cease participation in accordance with KRS 61.522(8).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the processes and procedures for a quasi-governmental employer participating in the Kentucky Employees Retirement System to voluntarily cease participation in accordance with KRS 61.522(8).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by establishing the processes and procedures for a quasi-governmental employer participating in the Kentucky Employees Retirement System to voluntarily cease participation in accordance with KRS 61.522(8).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the processes and procedures for a quasi-governmental employer participating in the Kentucky Employees Retirement System to voluntarily cease participation in accordance with KRS 61.522(8).

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

(a) How the amendment will change this existing administrative regulation: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Retirement Systems and quasi-governmental employers wishing to cease participation in the Kentucky Employees Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation will allow provide certain quasi-governmental employers a limited window in which to cease participation in Kentucky Employees Retirement System.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The quasi-governmental employer would have its internal cost of voluntary ceasing participating, which would vary by employer. As required by the statute, KRS 61.522, the employer must also pay all the administrative costs incurred by Kentucky Retirement Systems. This cost will also vary by employer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The quasi-governmental employer will be permitted to voluntarily cease participating in the Kentucky Employees Retirement System.

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

(a) Initially: The cost of filing the application and completing the process of voluntary withdrawal.

(b) On a continuing basis: There will be no continuing cost to the employer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Retirement Systems are paid from the Retirement Allowance Account (trust and agency funds).

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees. The employer must pay the administrative costs incurred by Kentucky Retirement Systems pursuant to KRS 61.522.

(9) TIERING: Is tiering applied? Tiering is not applied. All quasi-governmental employers seeking to voluntarily cease participation are subject to the same processes and procedures.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Retirement Systems and quasi-governmental employers eligible to voluntarily cease participation in the Kentucky Employees Retirement System pursuant to KRS 61.522(6).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.522.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The employer will have to pay its internal administrative costs and Kentucky Retirement Systems' administrative costs. The administrative regulation generates no revenue, but will allow employers to cease participation, which will eliminate the requirement for them to pay continuing employer contributions after cessation. The employer is required by statute to pay the actuarial cost of cessation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? Ultimately, the cost to Kentucky Retirement Systems should be negligible, as KRS 61.522 requires voluntary ceasing quasi-governmental employers to pay its internal administrative costs and Kentucky Retirement Systems' administrative costs related to cessation.

(d) How much will it cost to administer this program for

subsequent years? KRS 61.522 requires the ceasing quasi-governmental employer to pay its internal administrative costs and Kentucky Retirement Systems' administrative costs so the cost to Kentucky Retirement Systems should be negligible.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**STATEMENT OF EMERGENCY**
**501 KAR 1:040E**

Nature of the emergency. The Kentucky Supreme Court, in Jones v. Bailey, 576 S.W.3d 128 (Ky. 2019), determined that the process for revoking parole and various forms of discharge that are treated like parole, is unconstitutional since it violates the offender's due process rights. Jones held that, to meet due process, the Parole Board must hold a full hearing for the revocation process. In order to comply with this ruling, the administrative regulation must be amended to provide for a hearing before the Parole Board. The Department of Corrections does not currently have the capacity for the offenders committed to it and has a back log of offenders in county jails awaiting transfer into a DOC institution. This contributes to a number of jails being over capacity. It is important that the parole revocation process be made compliant as quickly as possible so that offenders who will not be returned to prison are released as soon as possible and requests for a new hearing can be held quickly. This emergency regulation is necessary to meet an imminent threat to the public health, safety and welfare. An ordinary regulation is not sufficient because it will delay the ability to conduct revocation proceedings and to address approximately fifty past revocations for which a new hearing may be requested. There is no procedure at present to conduct these hearings. This emergency administrative regulation will allow revocation proceedings to resume as quickly as possible. This administrative regulation will be replaced by an ordinary administrative regulation that is being filed with the emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
LELIA VANHOOSE, Chair, Kentucky Parole Board

**JUSTICE AND PUBLIC SAFETY CABINET**
**Parole Board**
**(Emergency Amendment)**

**501 KAR 1:040E. [~~Conducting~~] Parole revocation hearing procedures[~~hearings~~].**

RELATES TO: KRS 439.315, 439.330(1)(e), 439.3406, 439.341, 439.346, 439.390, 439.430, 439.440, 532.043, 532.400

STATUTORY AUTHORITY: KRS 439.340(3)

EFFECTIVE: October 21, 2019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340(3) requires the Parole Board to establish administrative regulations concerning parole revocation hearings. This administrative regulation contains the procedures for the revocation of parole, the probable cause hearing, and the issuance of parole violation warrants.

Section 1. Definitions.

(1) "Board" means the Kentucky Parole Board established in KRS 439.320.

(2) "Fact finder" means the person or entity that determines the facts at a hearing and includes the administrative law judge or the Parole Board depending on which conducts the hearing and issues findings of fact.

(2) "Parole" means parole and other forms of supervision treated like parole in that the Parole Board has the authority to revoke supervision.

(3) "Probable cause hearing" means a hearing before an administrative law judge to determine if there is probable cause that a parole violation has occurred.

Section 2. Notice of Probable Cause Hearing. Charges of a parole violation shall be initiated by a parole officer of the Department of Corrections by service of a notice of the probable cause hearing.

(1) The parole officer shall complete the following for the notice:

(a) Alleged violations;

(b) Evidence to be presented at the hearing;

(c) Witnesses upon whose statements revocation is based if disclosure of that information will not create a risk of harm to the witness;

(d) Time;

(e) Date; and

(f) Location of hearing.

(2) The notice shall also:

(a) State the purpose of the hearing;

(b) Inform the offender of his right to:

1. Be present;

2. Speak on his own behalf; and

3. Call witnesses and present evidence in defense of the charges;

(c) Inform the offender that he may have counsel present;

(d) Inform the offender that the hearing shall not be held sooner than five (5) days after the offender is served with the notice of the hearing, unless the offender waives this time period; and

(e) Inform the offender that he may request a continuance of the hearing, if good cause is shown.

Section 3. Probable Cause Hearing Preliminary Information.

(1) Hearing Date. A probable cause hearing shall not be conducted earlier than five (5) days after service of the notice of the hearing, unless this period is waived by the offender.

(2) Representation by Counsel. An offender appearing at a Preliminary Revocation Hearing may be represented by counsel. The offender may have a continuance for the purpose of obtaining the presence of counsel by making a motion for this purpose. More than two (2) appearances for hearing without counsel by an offender who is capable of retaining counsel may be deemed an implicit waiver of counsel.

(3) The offender may request a continuance of the hearing from the administrative law judge for good cause.

(4) Agency Representation. A duly appointed probation and parole officer of the Commonwealth of Kentucky may appear before the administrative law judge as the representative of the Department of Corrections in matters relating to the revocation of parole in the absence of an attorney, pursuant to SCR 3.700 sub-rule 3.

Section 4. Waiver of Probable Cause Hearing.

(1) Except for offenders who are less than eighteen (18) years of age, an offender charged with a violation of parole may waive the probable cause hearing by waiving his appearance before an administrative law judge.

(2) An offender shall submit the waiver in writing to the offender's Probation and Parole Officer who shall forward it to the board or its administrative law judge for approval.

(3) The waiver may be accepted at the discretion of the board or its administrative law judges.

(4) A waiver shall not be accepted unless it is found that the offender:

(a) Made the waiver:

1. Knowingly; and

2. Voluntarily; and

(b) Understands that the offender admits probable cause exists for the violations charged.

(5) Notwithstanding the submission and acceptance of a waiver of the probable cause hearing, the offender may still have a final revocation hearing.

(6) After approval of the waiver, the matter shall proceed in the

same manner as if a hearing was held and probable cause determined.

(7) If an offender being supervised in another state signs a waiver of probable cause hearing in that state, the waiver shall be reviewed by an administrative law judge of the board to determine if the waiver meets the requirements of subsections (1) - (6) of this section. If the administrative law judge determines that the waiver does not comply with subsections (1) - (6) of this section, the board chair or designee shall refer the matter back to the Division of Probation and Parole and request that it take action necessary to insure compliance with this administrative regulation.

Section 5. Conduct of Probable Cause Hearing.

(1) A probable cause hearing shall be conducted by an administrative law judge who shall have control over the proceedings and the reception of evidence at the hearing.

(2) Hearing Record. A probable cause hearing shall be conducted on the record. The hearing may be recorded and preserved by any means practical, including electronically, mechanically, or stenographically. If requested by the board, the record of the proceedings shall be transcribed.

(3) Hearing Procedure.

(a) The administrative law judge may take judicial notice of acts of the board, including the conditions of parole, and all other matters which may be judicially noticed in the courts of this Commonwealth pursuant to KRE 201.

(b) A witness shall testify under oath, administered by the administrative law judge, and shall be available for examination by the other party or the administrative law judge, unless good cause dictates otherwise.

(c) The parole officer shall bear the burden of proof in establishing the elements of the violation.

(d) The parole officer shall present evidence first and the offender shall be given the opportunity to present evidence in defense. Any further proceedings shall be conducted at the discretion of the administrative law judge.

(3) Amend Notice of Hearing. The notice of the hearing may be amended at any time prior to the close of the record of the preliminary hearing, within the discretion of the administrative law judge, if a finding is made that the substantial rights of the parolee shall not be prejudiced by the amendment. If the notice is amended, a continuance of the hearing may be granted if the interest of justice so requires. Failure to object to any defect in the notice prior to the close of the hearing shall be deemed a waiver.

(4) Continuance of Hearing. The probable cause hearing may be continued or recessed with further proof to be taken at any time prior to the close of the record for good cause shown. At the request of either party, the administrative law judge may, within his or her discretion, leave the record open for reception of additional evidence provided that no substantial rights are prejudiced.

Section 6. Probable Cause Determination.

(1) The administrative law judge shall make a determination whether probable cause exists to believe that the offender has committed any or all of the violations alleged in the notice of probable cause hearing.

(2) The determination shall be made from the evidence produced at the hearing and any evidence for which judicial notice is taken.

(3) The determination shall be rendered at the close of the hearing or within a reasonable time thereafter.

(4) If probable cause is not found by the administrative law judge:

(a) The offender shall continue on parole without further action by the board, if no parole violation warrant has been issued; or

(b) The matter shall be referred to the board pursuant to Section 7 of this administrative regulation for the warrant to be rescinded, if a parole violation warrant has been issued.

(5) If probable cause is found by the administrative law judge, the matter shall be referred to the board for issuance of a parole violation warrant, if one has not been issued, and a final revocation hearing.

(6) The administrative law judge shall not consider matters of bail or any other form of release from custody for an offender accused of parole or probation violations, in the absence of any specific statutory authorization.

(7) Written decision. The administrative law judge shall issue a written decision stating the determination concerning probable cause, the reasons for the determination, and the evidence relied upon. The decision shall be sent to the parole officer and the offender or counsel if represented at the probable cause hearing.

Section 7. Referral for Parole Violation Warrant.

(1) If probable cause is determined to exist, the case shall be referred to the board for issuance of a parole violation warrant and a final revocation hearing.

(2) New criminal conviction.

(a) If the alleged violation of parole, as set forth in the notice of probable cause hearing, is new criminal conduct which does not also constitute a technical violation of the conditions of supervision, or the conditions of parole, the case shall not be referred to the board for parole revocation consideration unless the:

1. Offender has received a conviction in a court of law;

2. Offender had pled guilty to the alleged criminal conduct;

3. Offender has made some other form of judicial admission; or

4. Criminal conduct, or a substantial part of it, was committed in the presence of a duly appointed probation and parole officer of the Commonwealth of Kentucky.

(b) Nothing in this subsection shall prevent revocation of parole for a technical violation, which also happens to partially or wholly involve criminal conduct.

Section 8. Parole Violation Warrant. Parole violation warrants shall be issued as set forth below:

(1) If a case is referred to the board by the administrative law judge under the provisions of Section 6(5) of this administrative regulation, the board chair shall issue the parole violation warrant. A vote of the board shall not be necessary.

(2) If it appears that an offender has absconded from parole supervision, it otherwise appears that a parolee is a fugitive from justice, or a parole violation warrant is necessary to effect the return of the parolee to the state of Kentucky, the board chair may issue a warrant, if the chair receives documentation from the supervising parole officer, setting forth facts sufficient to conclude there are reasonable grounds to believe that some violation has occurred, and the commissioner or his designee submits to the board a recommendation that a warrant be issued.

(3) If the offender is being supervised outside the state of Kentucky, the board chair shall determine whether to issue a parole violation warrant based upon:

(a) A written report from the supervising state setting forth facts sufficient to conclude that there are reasonable grounds to believe that a violation of parole has occurred; and

(b) The commissioner or his designee submits to the board a recommendation that a warrant be issued.

(4) The board may decline any request for a parole violation warrant made pursuant to any section of this administrative regulation except subsection (1) of this section. Any parole violation warrant, issued under any section of this administrative regulation, may be rescinded by majority vote of the board at any time.

(5) The board chair shall issue parole violation warrants for the board without a board vote.

(6) Any member of the board designated by the board chair may sign a parole violation warrant in the absence of the chair.

Section 9. Probable Cause Hearing Conducted Subsequent to Issuance of the Parole Violation Warrant or for Offenders Supervised in Another State.

(1) (a) This subsection shall not apply if a parolee is being supervised by another state and if that supervisory state held a probable cause hearing for the parolee.

(b) A probable cause hearing shall be conducted, if:

1. A parole violation warrant was issued for an offender without a probable cause hearing; and

2. The offender is apprehended or returns to the Commonwealth of Kentucky.

(c) Except as provided by paragraph (e) of this subsection,

following the hearing, the offender shall be ordered returned to the appropriate institution of the Kentucky Department of Corrections for further consideration by the board if the administrative law judge finds that there is probable cause to believe that the:

1. Offender committed any of the violations contained in the warrant; and

2. Warrant was validly issued as to any of the charges contained within it.

(d) If the administrative law judge finds no probable cause, the case shall be referred to the board to withdraw the warrant and return the offender to supervision.

(e) If probable cause is found:

1. The administrative law judge shall refer the case to the board to decide whether the warrant should be exercised or withdrawn if:

a. The parole officer moves for a referral; or

b. The administrative law judge finds that there are overwhelming mitigation factors present that were not known to the board at the time of the warrant's issuance.

2. If the board decides to withdraw the warrant, the offender shall be returned to normal parole supervision, subject to any additional conditions the board may impose.

3. If the board decides to exercise the warrant, the parolee shall be ordered returned to the appropriate institution.

(2) If a probable cause hearing is held by the supervising state for an offender being supervised in another state, and the supervising state concludes as a result of the hearing that a violation has occurred:

(a) The case shall first be reviewed by an administrative law judge for the board to determine whether the proceeding held in the supervising state and the conclusions reached in the hearing comply with due process;

(b) After the review, the administrative law judge shall refer the case to the board for:

1. Issuance of a parole violation warrant as set forth in Section 7 of this administrative regulation if one has not been issued; or

2. A final hearing as set forth in Section 11 of this administrative regulation if a warrant has been issued.

Section 10. Notice of Final Revocation Hearing. The final revocation hearing process shall be initiated by service of a notice of final revocation hearing.

(1) The parole officer shall complete the following for the notice:

(a) Alleged violations;

(b) Evidence against the offender to be presented at the hearing;

(d) Time;

(e) Date; and

(f) Location of hearing.

(2) The notice shall also inform the offender that:

(a) A hearing will be conducted on the alleged violations;

(b) The standard of proof for the hearing shall be a preponderance of the evidence;

(c) The offender may call witnesses and present evidence in defense and mitigation of the charges;

(d) The offender may be entitled to have counsel present at the final revocation hearing; and

(e) If the offender wants to have counsel present at the final revocation hearing, he shall request the presence of counsel at the hearing in writing prior to the hearing date. The fact finder shall respond to his request within five (5) days of receipt.

Section 11. Final Revocation Hearing Preliminary Information.

(1) Hearing Date. A final revocation hearing shall be held within thirty (30) days after the return of the parolee to a state institution. The offender may request a delay or continuance for good cause from the board.

(2) The purpose of the final revocation hearing shall be to determine if the offender's parole will be revoked.

(3) Requests to have counsel present at the final revocation hearing.

(a) A determination of whether the offender may have counsel present at the final revocation hearing shall be made on a case-by-case basis by the board within five (5) days after the request is received by the fact finder.

(b) In making this determination, the board shall consider whether the offender:

1. Has articulated a timely and colorable claim that he did not commit the alleged violation of the conditions of supervision;

2. Has articulated substantial reasons that:

a. Justify or mitigate the violation;

b. Make the revocation inappropriate; and

c. Are complex or otherwise difficult to develop or present; and

3. Appears to be capable of speaking effectively for himself.

(4) Limited Request for Final Revocation Hearing.

(a) If an offender had a final revocation hearing on or after July 5, 2018 and before October 24, 2019, the offender may request a new final revocation hearing by sending a request for a new final revocation hearing in writing to the board. The request shall include:

1. The date of the offender's probable cause hearing;

2. The date of the revocation decision; and

3. Any documentation of the revocation decision in the offender's possession.

(b) The request may be rejected without action by the board if a final revocation hearing was held on or after October 24, 2019.

Section 12. Waiver of Final Revocation Hearing.

(1) With the exception of offenders who are less than eighteen (18) years of age, an offender being held pursuant to a parole violation warrant may request to waive his final revocation hearing, after his probable cause hearing or acceptance of a waiver of the final revocation hearing.

(2) Waiver procedure.

(a) An offender shall submit the waiver in writing to the board or its fact finder for approval.

(b) The waiver may be accepted at the discretion of the board or its fact finder.

(c) A waiver shall not be accepted unless it is found that the offender:

1. Made the waiver:

a. Knowingly; and

b. Voluntarily; and

2. Understands that the offender admits the violations charged occurred.

(d) In the event that waiver of the final revocation hearing is accepted, the final decision on the revocation of the offender's parole shall be made by the board without any further proceedings.

Section 13. Conduct of Final Revocation Hearing.

(1) Hearing procedure.

(a) The charges of violations and the evidence against the offender shall be explained to offender.

(b) The offender shall then have the opportunity to present evidence in defense and mitigation of the charges.

(c) The standard of proof shall be a preponderance of the evidence.

(d) The hearing may be continued or recessed with further proof to be taken at any time prior to the close of the record for good cause shown and provided no substantial rights are prejudiced.

(e) The hearing shall be conducted on the record and may be recorded and preserved by any means practical, including electronically, mechanically, or stenographically. If requested by the Board, the record of the proceedings shall be transcribed.

(2) Written findings of fact and decision.

(a) The fact finder shall provide the offender with written findings of fact concerning the alleged violations within twenty-one (21) days of the final revocation hearing.

(b) The board chair or designee may extend the time period for good cause.

(c) The findings of fact shall include a determination of whether the fact finder:

1. Found the offender to have committed the alleged violations by a preponderance of the evidence; and

2. Recommends that parole be revoked with the evidence relied on and the reasons for recommending the revocation of

parole, if the fact finder is not the board.

(d) The board shall issue a decision in writing whether parole is revoked or not:

1. Based on the findings of fact determined at the final revocation hearing; and

2. a. Adopt the recommendation of the administrative law judge; or

b. Determine to revoke or not based on its own reasoning.

(e) A copy of the decision shall be provided to the offender.[~~Preliminary Revocation Hearings. Preliminary revocation hearings shall be conducted by an administrative law judge of the Parole Board who shall have control over the proceedings and the reception of evidence at these hearings.~~

~~(1) Charges of parole violation shall be initiated by a parole officer of the Department of Corrections by service of a notice of preliminary hearing which sets forth the alleged violations. This notice may be amended at any time prior to the close of the record of the preliminary hearing, within the discretion of the administrative law judge, if a finding is made that the substantial rights of the parolee shall not be prejudiced by the amendment. A continuance of the proceeding may be granted in the event of this amendment, if the interest of justice so requires. Failure to object to any defect in the notice prior to the close of the hearing shall be deemed a waiver of this objection.~~

~~(2) Pursuant to SCR 3.700 Sub-rule 3, in the absence of an attorney to represent the Department of Corrections, Division of Probation and Parole, before the board and the administrative law judge, any duly appointed probation and parole officer of the Commonwealth of Kentucky may appear before the board or its administrative law judge as representative of the Department of Corrections in matters relating to the revocation of probation or parole.~~

~~(3) Unless the waiting period is waived by a parolee, a preliminary hearing shall not be conducted earlier than five (5) days of service of notice of the hearing. The preliminary hearing may be continued or recessed with further proof to be taken at any time prior to the close of the record for good cause shown. At the request of either party, the administrative law judge may, within his discretion, leave the record open for reception of additional evidence provided that no substantial rights are prejudiced.~~

~~(4) All preliminary revocation hearings shall be conducted on the record. The hearing may be recorded and preserved by any means practical, including electronically, mechanically, or stenographically. If requested by the board, the record of the proceedings shall be transcribed.~~

~~(5) The administrative law judges may take judicial notice of acts of the Parole Board, including the conditions of parole, and all other matters which may be judicially noticed in the courts of this Commonwealth pursuant to KRE 201. Witnesses appearing at the preliminary hearing to give testimony shall do so under oath, administered by the administrative law judge, and shall be available for examination by the other party or the administrative law judge, unless good cause dictates otherwise. The parole officer shall bear the burden of proof in establishing the elements of the violation. The parole officer shall present evidence first and the parolee shall be given the opportunity to present evidence in defense or mitigation. Any further proceedings shall be conducted at the discretion of the administrative law judge. The parolee may, within reasonable limits, present evidence solely for the purpose of mitigation of his conduct, including evidence of his mental condition. If presented, this evidence shall be subject to rebuttal by the parole officer.~~

~~(6)(a) At the close of the hearing, or within a reasonable time thereafter, the administrative law judge shall make a determination, from the evidence produced at the hearing, as well as any evidence of which judicial notice is taken, whether there exists probable cause to believe that the parolee has committed any or all of the violations alleged in the notice of preliminary hearing.~~

~~(b) Except as provided by paragraph (c) of this subsection, if probable cause is found to exist, the case shall then be referred to the Parole Board which shall then issue a parole violation warrant which shall cause the parolee to be brought before the Parole Board for a final parole revocation hearing.~~

~~(c) Notwithstanding a finding of probable cause, leniency may be granted in any form deemed appropriate by the administrative law judge if all parties agree to the leniency, and if the parolee agrees to any additional conditions of his parole as set forth by the administrative law judge after consultation with the parole officer.~~

~~(7) If the administrative law judge finds probable cause to believe that a violation of parole has been committed and the case is referred to the Parole Board for the issuance of a parole violation warrant, the administrative law judge shall issue a written decision and may issue a recommendation, along with reasons in support of that recommendation, as to what action should be taken concerning the parolee's parole, including recommendations concerning the terms and conditions of any future parole. This recommendation shall be advisory only and shall not be binding on the board. If the administrative law judge finds that there exists substantial mitigating factors or a viable alternative to reincarceration, the administrative law judge may recommend that the parolee not be returned as a parole violator. If the administrative law judge makes that finding and recommendation, the case shall be referred to the Parole Board for their vote on the issuance of the parole violation warrant.~~

~~(8) In preliminary revocation hearings conducted on probation cases or on cases in which the releasing authority is other than the Kentucky Parole Board, upon a finding of probable cause, the matter may be referred to the releasing authority for further revocation consideration, or leniency may be considered on the same basis as a case in which the Kentucky Parole Board is the releasing authority.~~

~~(9) If the alleged violation of parole, as set forth in the notice of preliminary hearing, is new criminal conduct which does not also constitute a technical violation of the conditions of supervision, or the conditions of parole, the case shall not be referred to the board for parole revocation consideration unless it is shown that the parolee has received a conviction in a court of law or there exists some other form of judicial admission, such as a plea of guilty, concerning the alleged criminal conduct, or it is found that the criminal conduct, or a substantial part of it, was committed in the presence of a duly appointed probation and parole officer of the Commonwealth of Kentucky. Nothing in this subsection shall prevent revocation of parole for a technical violation, which also happens to partially or wholly involve criminal conduct.~~

~~(10) Any party appearing before an administrative law judge of the Kentucky Parole Board may be represented by counsel if he so desires. The party may have, upon motion thereof, a continuance for the purpose of obtaining the presence of counsel; except that chronic appearance for hearing without counsel by a parolee who is capable of retaining counsel may be deemed an implicit waiver of counsel.~~

~~(11) The administrative law judges, in the absence of any specific statutory authorization, shall not consider matters of bail or any other form of release from custody for those persons accused of parole or probation violations.~~

~~Section 2. Good Cause Hearings. KRS 439.315 requires the imposition of a supervision fee on all parolees and the establishment of a good cause hearing if the supervision fee is not paid. This section describes the good cause hearing.~~

~~(1) Upon nonpayment of any installment of the monthly supervision fee, the parole officer shall serve a notice of preliminary hearing on the parolee and also shall serve the supplemental notice of good cause hearing on the parolee.~~

~~(2) The good cause hearing shall be scheduled as any other preliminary revocation hearing.~~

~~(3) If the parolee makes the required supervision fee payment prior to the scheduled good cause hearing, the hearing shall be cancelled.~~

~~(4) The parolee shall be permitted legal representation at the good cause hearing.~~

~~(5) The burden of proof to show good cause for nonpayment of the supervision fee shall be placed upon the parolee.~~

~~(6) The administrative law judge of the Kentucky Parole Board shall determine whether good cause exists for the nonpayment of the supervision fee.~~

~~(7) If the administrative law judge finds that good cause exists for the nonpayment of the supervision fee, the charges shall be dismissed and the parolee shall be returned to parole supervision with the previously imposed supervision fee.~~

~~(8) If the administrative law judge finds that good cause does not exist, the parole officer may request that the hearing be continued~~

~~sine die with the condition that the parolee pay the arrears and agrees to pay the supervision fee on a monthly basis.~~

~~(9) If the administrative law judge finds that good cause does not exist for nonpayment of the supervision fee, absent any motion from the parole officer, the hearing shall immediately continue and become a preliminary parole revocation hearing, and shall be conducted as described in Section 1 of this administrative regulation.~~

~~Section 3. Parole Violation Warrant. Parole violation warrants shall be issued as set forth below:~~

~~(1) If a case is referred to the Parole Board by the administrative law judge under the provisions of Section 1(6) of this administrative regulation, the Parole Board shall issue the parole violation warrant. A vote of the board shall not be necessary.~~

~~(2) If a case is referred to the full Parole Board by the administrative law judge with a recommendation that the parolee not be returned to the institution as a parole violator, pursuant to Section 1(7) of this administrative regulation, the board may issue a parole violation warrant, if upon review a majority of the board concurs that probable cause exists to believe a parole violation has taken place. If the board votes to issue the warrant, the warrant shall be issued.~~

~~(3) If it appears that a parolee has absconded from parole supervision, it otherwise appears that a parolee is a fugitive from justice, or a parole violation warrant is necessary to effect the return of the parolee to the state of Kentucky, the Parole Board may issue a warrant, if it receives documentation from the supervising parole officer, setting forth facts sufficient to conclude there are reasonable grounds to believe that some violation has occurred, and the commissioner or his designee submits to the board a recommendation that a warrant be issued.~~

~~(4) If the parolee is being supervised outside the state of Kentucky, a parole violation warrant may be issued upon a vote of the Parole Board based upon a written report from the supervising state setting forth facts sufficient to conclude that there are reasonable grounds to believe that a violation of parole has occurred, and the commissioner or his designee submits to the board a recommendation that a warrant be issued.~~

~~(5) In all other cases parole violation warrants may be issued only upon majority vote of the board, except as set forth in subsection (7) of this section. If the board votes to issue any warrant, the warrant shall be issued.~~

~~(6) The board may decline any request for a parole violation warrant made pursuant to any section of this administrative regulation except subsection (1) of this section. Any parole violation warrant, issued under any section of this administrative regulation, may be rescinded by majority vote of the board at any time.~~

~~(7) If a vote of the board is required to issue a parole violation warrant, and if there is no quorum of the board present to concur that probable cause exists and the warrant should be issued, any member of the Parole Board may issue a parole violation warrant if he, upon review concurs that probable cause exists to issue said warrant. If a parole violation warrant is issued under these circumstances, the board shall vote, as soon as is reasonable, on whether or not to concur in the issuance of the warrant. If a majority of the board does not concur, the warrant shall be voided by the board.~~

~~(8) Any member of the Parole Board may sign warrants.~~

~~Section 4. Preliminary Hearings Conducted Subsequent to the Issuance of the Parole Violation or for Parolees Supervised in Another State. (1)(a) This subsection shall not apply if a parolee is being supervised by another state and if that supervisory state held a preliminary parole revocation hearing for the parolee.~~

~~(b) A preliminary revocation hearing shall be conducted pursuant to Section 1 of this administrative regulation, if:~~

~~1. A parole violation warrant has been issued for a parolee without a preliminary revocation hearing; and~~

~~2. The parolee is apprehended or returns to the state of Kentucky.~~

~~(c) Except as provided by paragraph (e) of this subsection, following the hearing, the parolee shall be ordered returned to the appropriate institution of the Kentucky Department of Corrections for further consideration by the Parole Board if the administrative law judge finds that there is probable cause to believe that:~~

~~1. The parolee committed any of the violations contained in the warrant; and~~

~~2. The warrant was validly issued as to any of the charges contained within it.~~

~~(d) If the administrative law judge finds no probable cause, the case shall be referred to the Parole Board which shall withdraw the warrant and return the parolee to supervision.~~

~~(e)1. If probable cause is found, the administrative law judge may refer the case back to the Parole Board to decide whether the warrant should be exercised or withdrawn if:~~

~~a. The parole officer moves for a referral; or~~

~~b. The administrative law judge finds that there are overwhelming mitigation factors present that were not known to the board at the time of the warrant's issuance.~~

~~2. If referred back to the Parole Board, the administrative law judge may include a recommendation that the warrant be rescinded. This recommendation shall be advisory only and shall not be binding on the board.~~

~~3. If the Parole Board decides to withdraw the warrant, the parolee shall be returned to normal parole supervision, subject to any additional conditions the Parole Board may impose.~~

~~4. If the Parole Board decides to exercise the warrant, the parolee shall be ordered returned to the appropriate institution.~~

~~(2) If a preliminary parole revocation hearing is held by the supervising state for a parolee being supervised in another state, and the supervising state concludes as a result of the hearing that a violation has occurred, the case shall first be reviewed by an administrative law judge of the board who shall determine whether or not the proceeding held in the supervising state, and the conclusions reached in the hearing, complies with due process. After the review, the administrative law judge shall refer the case to the Parole Board as set forth in Section 1(6) of this administrative regulation.~~

~~Section 5. Waiver of Preliminary Parole Revocation Hearings. (1) Any parolee charged with a violation of his parole may waive appearance before an administrative law judge of the Parole Board and by so doing waive his preliminary parole revocation hearing. Parolees desiring to waive this hearing shall submit their waivers in writing to the board or its administrative law judge for approval. These waivers may be accepted within the discretion of the board or its administrative law judges. No wavier shall be accepted unless it is found that the waiver was entered into by the parolee knowingly, and voluntarily and that the parolee is, and clearly understands that he is admitting guilt as to the violations charged. Notwithstanding the submission and acceptance of a waiver of the preliminary parole revocation hearing, the parolee may still submit evidence in mitigation of his conduct. After approval of the waiver, the matter shall proceed in the same manner as after a hearing before an administrative law judge.~~

~~(2) If a parolee being supervised in another state signs a waiver of preliminary hearing in that state, this waiver shall be reviewed by an administrative law judge of the board to determine if the waiver meets the requirements of subsection (1) of this section. If the administrative law judge determines that the waiver does not comply with subsection (1) of this section, the executive director shall refer the matter back to the Division of Probation and Parole and request that they take action necessary to insure compliance with this administrative regulation.~~

~~Section 6. Final Parole Revocation Hearings. Final parole revocation hearings shall be held within thirty (30) days after the return of the parolee to a state institution. At this hearing, the parolee shall have the charges, specified in the warrant, explained to him and he shall be given the opportunity to admit or deny them. If the inmate admits to the charges, then the board shall receive proof in mitigation of the charges. If the parolee wishes to present new or different information than presented at the preliminary hearing, and shows that this information could not have been presented at the preliminary hearing, he may request a special hearing. The grant or denial of a special hearing shall be totally within the discretion of the board. If granted by the board, a short deferment shall be given so the special hearing can be scheduled in central office and the parolee can secure legal counsel. The request for a special hearing~~

~~by a parolee shall occur at the beginning of the final parole revocation hearing, before he admits or denies guilt. The parolee shall be notified of his right to request a special hearing at his preliminary parole revocation hearing. It is the responsibility of the parolee, and his alone, to request a special hearing if he so desires one.~~

~~Section 7. Special Hearings. (1) Special hearings shall be conducted in the central office of the Parole Board, unless the Parole Board changes the site for security or other factors it deems pertinent. In cases so heard, if the parole officer or the parolee requests the issuance of subpoenas to compel the appearance of witnesses or production of documents, the board shall issue them pursuant to KRS 439.390, if no claims for expenses incurred by these witnesses shall be submitted to the board, as it has no authorization to pay these expenses.~~

~~(2) At the special hearing, the following order of proceedings shall be followed:~~

~~(a) The parolee, parole officer, and all witnesses shall be sworn in by the Parole Board.~~

~~(b) The board shall present a short statement of the charges against the parolee.~~

~~(c) The parole officer shall present proof to substantiate the charges, subject to cross-examination by the parolee.~~

~~(d) The parolee shall present proof to rebut the parole officer's charges, subject to cross-examination by the parole officer.~~

~~(e) The parole officer may put on any rebuttal proof subject to cross-examination.~~

~~(f) The board may question both the parolee and the parole officer and any witnesses.~~

~~(g) The board shall then make a determination as to whether the parolee has violated his parole.~~

~~(h) If the parolee is found in violation or if he admits the violation and has proof in mitigation, the board shall receive proof from the parolee in mitigation of the violation subject to cross-examination.~~

~~(i) At the conclusion of the special hearing, the board shall make a determination as to the disposition of the case and notify the parolee in person or in writing as soon as practical.~~

~~Section 8. Waiver of Final Parole Revocation Hearing. A parolee being held pursuant to a parole violation warrant may, subsequent to his preliminary parole revocation hearing, or acceptance of a waiver thereof, request that he be allowed to waive his final parole revocation hearing. Parolees desiring to waive this hearings shall submit their waivers in writing to the board. Acceptance of this waiver shall be totally within the discretion of the board and shall be based only upon a finding that the waiver is entered into knowingly and voluntarily and that the parolee is admitting guilt as to the violations charged. Waiver of the right to the final hearing shall also be considered as waiver of any rights to a special hearing as provided for in Sections 6 and 7 of this administrative regulation. In the event that waiver of the final hearing is accepted, the final decision on the revocation of the parolee's parole shall be made by the board without any further proceedings.~~]

The Chair of the Kentucky Parole Board, with the authorization and approval of a majority of the members of the Kentucky Parole Board on September 30, 2019, approves the promulgation of the regulation on behalf of the Kentucky Parole Board, as indicated by her signature below.

LELIA A. VANHOOSE, Chair

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 21, 2019

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegsContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for parole revocation.

(b) The necessity of this administrative regulation: This regulation is required to comply with 439.340(3)(b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 439.340(3) requires the Kentucky Parole Board to promulgate administrative regulations with respect to the eligibility of prisoners for parole, the conduct of parole and parole revocation hearings and all other matters that come before it, or conditions to be imposed upon parolees. This administrative regulation establishes the procedures for the revocation of parole.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction to offenders and administrative law judges concerning the process to revoke parole for violation of conditions of parole.

(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 totally rewrites the regulation to update the parole revocation process and make changes required by Jones v. Bailey, 576 S.W.3d 128 (2019).

(b) The necessity of the amendment to this administrative regulation: The amendment is required to comply with case law.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 439.340(3)(b) requires the Kentucky Parole Board to promulgate administrative regulations governing parole revocation. The amendment changes the requirements involving parole revocation hearings.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows compliance with case law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the nine Parole Board members, the staff that assist the Board, and approximately 5,722 offenders involved in parole revocation proceedings.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Parole Board members, staff that assist the Board, offenders, and administrative law judges involved in parole revocation proceedings will have to follow the changes made in the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department of Corrections (DOC) provides administrative and staff services for the Parole Board pursuant to KRS 439.320(1). Costs for the DOC to provide two additional administrative law judges, new clerical staff, equipment, supplies, offender management system programming costs, and other expenses are estimated to be $350,200.00. Inmates who are not indigent or who choose to hire private attorneys will incur attorney fees in an unknown amount for defense at the final revocation hearings.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The new requirements for final revocation hearings will allow compliance with case law.

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

(a) Initially: $350,200.00

(b) On a continuing basis: $335.200.00

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The DOC may need an increase in funds to cover these estimated costs.

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

(9) TIERING: Is tiering applied? NO. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The administrative regulation and the amendment to it will impact the operations of the Parole Board, the Department of Corrections, and jails and prisons within Kentucky.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 439.320 and 439.340

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated by this regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated by this regulation.

(c) How much will it cost to administer this program for the first year? The amendment is expected to increase costs by $350,200.00.

(d) How much will it cost to administer this program for subsequent years? The amendment is expected to increase costs by $335.200.00.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**STATEMENT OF EMERGENCY**
**501 KAR 1:071E**

The Parole Board amended 501 KAR 1:040 to comply with Jones v. Bailey, 576 S.W.3d 128 (Ky. 2019), which determined that the process for revoking parole and various forms of discharge that are treated like parole, is unconstitutional since it violates the offender's due process rights. 501 KAR 1:040 was amended to provide for a hearing before the Parole Board or an administrative law judge. 501 KAR 1:040 was amended as an emergency amendment because of Department of Corrections and jail capacity issues so that offenders who will not be returned to prison are released as soon as possible and requests for a hearing may be held quickly. This emergency regulation is necessary to meet an imminent threat to the public health, safety and welfare and prevent a conflict with the provisions in the emergency amendment of 501 KAR 1:040. An ordinary regulation is not sufficient because of conflicting provisions with 501 KAR 1:040 that might delay the ability to conduct revocation proceedings and to address past revocations for which a hearing may be requested. This emergency administrative regulation will allow revocation proceedings to occur as quickly as possible without conflict with other administrative regulation provisions. This administrative regulation will not be replaced by an ordinary administrative regulation because this repeals an administrative regulation and an ordinary administrative regulation is not needed.

MATTHEW G. BEVIN, Governor
LELIA VANHOOSE, Chair, Kentucky Parole Board

**JUSTICE AND PUBLIC SAFETY CABINET**
**Parole Board**
**(Emergency Repealer)**

**501 KAR 1:071E. Repeal of 501 KAR 1:070.**

RELATES TO: KRS 439.330(1)(e), 439.340, 439.341, 439.346, 439.430, 532.043, 532.060
STATUTORY AUTHORITY: KRS 439.330, 439.340, 439.430
NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340(3) requires the Parole Board to establish administrative regulations concerning parole revocation hearings. Sex offender conditional discharge is a type of postincarceration supervision that is treated in a manner similar to parole pursuant to KRS 439.346 and 532.043. The revocation proceedings have been combined into one (1) administrative regulation and this administrative regulation is no longer needed.

Section 1. 501 KAR 1:070, Conducting sex offender postincarceration supervision revocation hearings, is hereby repealed.

The Chair of the Kentucky Parole Board, with the authorization and approval of a majority of the members of the Kentucky Parole Board on September 30, 2019, approves the repeal of the administrative regulation on behalf of the Kentucky Parole Board, as indicated by her signature below.

LELIA A. VANHOOSE, Chair

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 21, 2019

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2019, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2019. 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: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax(502) 564-6686, email Justice.RegsContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Amy V. Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals the administrative regulation that pertained to sex offender postincarceration supervision revocation since this type of revocation was added to 501 KAR 1:040, the parole revocation administrative regulation.

(b) The necessity of this administrative regulation: The revocation procedures for this type of supervision have been included in another administrative regulation and the repeal is needed to prevent duplication and conflict with the other administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The repeal is needed to prevent duplication and conflict with another administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal is needed to prevent duplication and conflict with another administrative regulation.

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is not an amendment.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal does not affect individuals, businesses, organizations, or state and local governments since the procedures are covered in another administrative regulation.

(4) Provide an analysis of how the entities identified in the previous question 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 each of the regulated entities have to take to comply with this regulation or amendment: No entities will have to take action since this is a repeal.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: No cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities: The repeal is needed to prevent duplication and conflict with another administrative regulation.

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

(a) Initially: No cost is anticipated.

(b) On a continuing basis: No cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This is a repealer and no funding is involved.

(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 is a repealer and no costs or fees are involved.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This is a repealer and no costs or fees are involved.

(9) TIERING: Is tiering applied? Explain why or why not. This is a repealer and no tiering is needed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The repeal does not affect state and local governments since the procedures are covered in another administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 439.320 and 439.340

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Repealing the regulation does not create any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Repealing the regulation does not create any revenue.

(c) How much will it cost to administer this program for the first year? Repealing the regulation does not create any cost.

(d) How much will it cost to administer this program for subsequent years? Repealing the regulation does not create any cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**STATEMENT OF EMERGENCY**
**907 KAR 10:840E**

This emergency administrative regulation is being promulgated to implement the Hospital Rate Improvement Program authorized by KRS 205.6405 through 205.6408. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2, to prevent a loss of state and federal funds. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to the emergency administrative regulation.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES**
**Department for Medicaid Services**
**Division of Fiscal Management**
**(New Emergency Administrative Regulation)**

**907 KAR 10:840E. Hospital Rate Improvement Program.**

RELATES TO: KRS 45.229, 142.303, 205.565, 205.637, 205.638, 205.639, 205.640, 205.6405, 205.6406, 205.6407, 205.6408, 216.380, 42 C.F.R. 413.17, 433.51, 438.340, 440.140, 447.272, 42 U.S.C. 1396a, 1395ww

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.520, 205.560, 205.6406(13), 42 C.F.R. 447.252, 447.253, 42 U.S.C. 1396a

EFFECTIVE: October 30, 2019

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 funds. KRS 205.6406(13) requires the department to promulgate an administrative regulation to implement the Hospital Rate Improvement Program, KRS 205.6405 to 205.6408. This administrative regulation establishes the requirements for implementing the Hospital Rate Improvement Program for qualifying hospitals.

Section 1. Definitions. (1) "Assessment" is defined by KRS 205.6405(1).

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

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

(4) "Program year" is defined by KRS 205.6405(14).

(5) "Qualifying hospital" is defined by KRS 205.6405(16).

(6) "Received date" means the date a claim is accepted and approved into the Medicaid Management Information System and does not mean the date a claim is actually paid.

(7) "Upper payment limit" or "UPL" is defined by KRS 205.6405(19).

Section 2. Hospital Rate Improvement Program. (1) Prior to the start of each program year and in accordance with the payment methodology required by KRS 205.6406(2), the department shall calculate for each qualifying hospital:

(a) A per-discharge uniform add-on amount that the qualifying hospital is eligible to receive as a supplemental payment for the program year for Medicaid fee-for-service discharges; and

(b) A per discharge uniform add-on amount that the qualifying hospital is eligible to receive as a supplemental payment for the

program year for Medicaid managed care discharges.

(2) With the exception of the initial implementation year, no less than thirty (30) days prior to the beginning of each program year, the department shall provide each qualifying hospital written notice of the total per-discharge uniform add-on amounts for both Medicaid fee-for-service and Medicaid managed care discharges. The notice shall include the data sources and methodologies used to arrive at the value for each variable upon which the qualifying hospital's per-discharge uniform add-on amounts shall be calculated for the program year.

(3) For each quarter in a program year, the department shall:

(a) Calculate each qualifying hospital's supplemental payments for Medicaid fee-for-service and Medicaid managed care in accordance with KRS 205.6406(3) through (11) by:

1. Excluding all inpatient claims with discharge dates preceding October 1, 2018 from enhanced payment calculations;

2. Reducing the number of inpatient claims eligible for enhanced reimbursement by the number of previously enhanced claims that have been voided in the Medicaid Management Information System; and

3. Excluding from enhanced payment calculations partial or adjusted inpatient claims that have previously received an enhanced payment;

(b) Make a quarterly Medicaid fee-for-service supplemental payment to each qualifying hospital, or its designee acting as a fiscal intermediary, in accordance with the methodology in KRS 205.6406(3)(a) and (c); and

(c) Make a quarterly Medicaid managed care supplemental payment to each qualifying hospital, or its designee acting as a fiscal intermediary, in accordance with the methodology in KRS 205.6406(3)(b), (d), and (e).

(4) Payment of the quarterly Medicaid managed care supplemental payment shall be made by distribution to each Medicaid managed care organization through a quarterly supplemental capitation payment.

(5) The department shall submit with, or prior to, the quarterly supplemental capitation payment directions to the Medicaid managed care organization for the payment of the quarterly Medicaid managed care supplemental payments to qualifying hospitals.

(6) In accordance with KRS 205.6406(6), each Medicaid managed care organization shall remit to each qualifying hospital, or its designee, as directed by the department the quarterly Medicaid managed care supplemental payment within five (5) business days of receipt of the quarterly supplemental capitation payment. The department shall establish contractual penalty provisions to require that each Medicaid managed care organization remit the required amounts within five (5) business days.

(7) In accordance with KRS 205.6406(9), a qualifying hospital may seek review by the department of any quarterly supplemental payment that the qualifying hospital suspects is in error and affects the amount of the quarterly supplemental payment by five (5) percent or more.

(a) The qualifying hospital shall submit a detailed listing of any disputed claim or claims for department consideration and potential updates to the Medicaid Management Information System.

(b) Once each claim is received and validated in the Medicaid Management Information System, the department may adjust the qualifying hospital's future quarterly supplemental payment to account for the correction.

(c) If the department determines that a correction is not warranted, the hospital may request an administrative appeal pursuant to 907 KAR 1:671.

(8) In order to receive a supplemental payment and to pay the assessment for that quarter, an entity shall be a qualifying hospital each day of a quarter for the program year.

(9) Medicaid Management Information System (MMIS) fee-for-service and managed care encounter data, queried by the claim received date, shall be utilized to calculate the quarterly payments.

(10) For each quarter in a program year, the department shall:

(a) Calculate each qualifying hospital's per-discharge hospital assessment in accordance with the methodology in KRS 205.6406(3)(g) and (h); and

(b) Provide notice to each qualifying hospital in accordance with KRS 205.6406(3)(i).

(11) A qualifying hospital's per-discharge hospital assessment shall be calculated using the Medicare cost report period ending in the calendar year that is two (2) calendar years prior to the first day of a program year. For example, for the program year beginning July 1, 2019, cost report periods ending in calendar year 2017 shall be utilized.

(a) If a qualifying hospital's cost report period referenced in this subsection is greater than or less than a normal calendar year of 365 days, the total discharges used in accordance with KRS 205.6406(3)(g) shall be annualized to a 365-day period.

(b) If a qualifying hospital is newly enrolled in the Medicaid program and does not have cost report information available for the period established in this subsection, the department may utilize the cost report information of a comparable hospital to approximate the newly enrolled hospital's utilization.

(12) A qualifying hospital shall pay its calculated per-discharge hospital assessment in accordance with KRS 205.6406(7).

(13) If a hospital assessment is not received in a timely manner, the department may deny or withhold future quarterly supplemental payments until the assessment is submitted.

(14) A qualifying hospital may authorize a third-party entity to serve as a fiscal intermediary to facilitate the implementation of this administrative regulation by providing letter notice to the department.

Section 3. Reporting Requirements (1) Throughout a program year, a qualifying hospital shall submit any documentation or information to the department that the department requests in a timely manner as designated by the department. This request may include any documentation pertaining to:

(a) Resolution of a quarterly supplemental payment that the qualifying hospital suspects is in error; or

(b) Quality metrics set forth in the department's Quality Strategy filed with the Centers for Medicare and Medicaid Services pursuant to 42 C.F.R. 438.340.

(2) If a qualifying hospital fails to provide the department with any requested documentation in a timely manner, the department may deny or withhold future quarterly supplemental payments, until the documentation is submitted.

Section 4. Upper Payment Limit. A supplemental payment referenced in this administrative regulation is not intended to cause aggregate Medicaid hospital reimbursement to exceed the aggregate statewide upper payment limit for privately-owned and non-state government-owned hospitals established in:

(1) 42 C.F.R. 447.271;

(2) 42 C.F.R. 447.272; or

(3) Any other applicable statute or administrative regulation.

Section 5. 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.

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 29, 2019

FILED WITH LRC: October 30, 2019 at 4 p.m.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This

administrative regulation establishes the Department for Medicaid Services (DMS) hospital rate improvement program for care provided by inpatient acute care hospitals to Medicaid recipients. This administrative regulation serves to implement HB 320 from the 2019 Regular Session of the Kentucky General Assembly. Specifically, DMS is required to calculate supplemental payments, notify each qualifying hospital of total per-discharge uniform add-on amounts, and make quarterly supplemental payments. The administrative regulation also requires DMS to distribute supplemental payments to qualifying hospitals by means of a quarterly supplemental capitation payment to managed care organizations (MCOs). The MCOs then forward the payments to the qualifying hospitals. The MCOs are required to remit the payment within 5 days, and failure to forward the entire payment within 5 days will result in the department assessing contractual penalties. The administrative regulation also establishes requirements relating to the hospital specific assessments, and establishes departmental actions when a payment is not received in a timely manner.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's reimbursement provisions and penalty provisions for the hospital rate improvement program required by 2019 HB 320.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation implements the provisions of 2019 HB 320.

(d) How this administrative regulation currently assists or shall assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing a statutorily required hospital rate improvement program.

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

(a) How the amendment shall 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 shall 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 government affected by this administrative regulation: The amendment applies to all inpatient acute care hospitals. Currently, there are approximately sixty-five (65) acute care hospitals participating in the Kentucky Medicaid program.

(4) Provide an analysis of how the entities identified in question (3) shall 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) shall have to take to comply with this administrative regulation or amendment. Participating hospitals will submit required assessments and comply with reporting requirements to enable the department to calculate each quarterly assessment.

(b) In complying with this administrative regulation or amendment, how much shall it cost each of the entities identified in question (3): Costs will vary by hospital and reporting period for the payment of assessments, the supplemental payments disbursed will likely exceed the amount of assessments.

(c) As a result of compliance, what benefits shall accrue to the entities identified in question (3): Acute care inpatient hospitals will benefit from enhanced rates available as part of this provider assessment program submitted as supplemental payments via the MCOs.

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

(a) Initially: DMS anticipates no additional costs to the department to implement this administrative regulation beyond the appropriation contained in 2019 HB 320.

(b) On a continuing basis: DMS anticipates no additional costs to the department 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 sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds.

(7) Provide an assessment of whether an increase in fees or funding shall 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 shall 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: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied in that different reimbursement methodologies are utilized in relation to different hospital types. In addition in-state and out-of-state hospitals receive different reimbursement. However, the administrative regulation applies equally to all regulated entities within each hospital type.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(30)

2. State compliance standards. KRS 205.520(3) states, "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. Medicaid reimbursement for services is required to be consistent with efficiency, economy, and quality of care and be sufficient to attract enough providers to assure access to services. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to:
".. .. provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

4. Shall this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The policy is not stricter or different than the federal standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) shall be impacted by this administrative regulation? The Department for Medicaid Services (DMS) shall be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), and 42 U.S.C. 1396a(a)(30).

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

(a) How much revenue shall this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

DMS anticipates that this administrative regulation will be revenue neutral to the department in the first year.

(b) How much revenue shall this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates that this administrative regulation will be revenue neutral to the department in subsequent years.

(c) How much shall it cost to administer this program for the first year? The costs associated with this program will be met by the appropriations contained in 2019 HB 320 in the first year of operation.

(d) How much shall it cost to administer this program for subsequent years? The costs associated with this program will be met by the appropriations to the department contained in 2019 HB 320 in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

# 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, November 12, 2019)**

### 13 KAR 1:020. Private college licensing.

RELATES TO: KRS 13B.005-13B.170, 164.020(23), 164.945, 164.946, 164.947, 164.992, 165A.320, 20 U.S.C. 1001 et. seq.

STATUTORY AUTHORITY: KRS ***164.020(38),*** 164.947(1), (2) ***[164.020(38)]*** [,~~164.020(37)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.947(1) requires the Council on Postsecondary Education to promulgate an administrative regulation to establish the procedures for the licensing of colleges as defined in KRS 164.945. KRS 164.947 provides that religious instruction or training shall not be restricted. This administrative regulation establishes the private college licensing requirements and the requirements for religious in-state colleges to apply for an exemption to those licensing requirements.

Section 1. Definitions.

(1) "Accredited" means the approval of an accrediting agency.

(2) "Accrediting agency" means a national or regional agency which evaluates colleges and is recognized by the United States Department of Education, the Council on Higher Education Accreditation, or the Council on Postsecondary Education.

(3) "Agent" means any person employed by a college to act as a solicitor, broker, or independent contractor to procure students for the college by solicitation in any form made at any place other than the main campus of the college.

(4) "College" is defined by KRS 164.945(1).

(5) "Degree" is defined by KRS 164.945(2).

(6) "Diploma" is defined by KRS 164.946(3).

(7) "In-state college" means a college that is charted by, organized within, and has its principal location in Kentucky.

(8) "Net tuition and fees" means the total of tuition and mandatory fee revenue less institutional scholarships and fellowships.

(9) "Operating or soliciting" means having a physical presence within Kentucky and includes:

(a) An instructional or administrative site within Kentucky whether owned, leased, rented, or provided without charge;

(b) Instruction, whether theory or clinical, originating from or delivered within Kentucky utilizing teachers, trainers, counselors, advisors, sponsors, or mentors;

(c) An agent, recruiter, in-state liaison personnel, institution, or business located in Kentucky that advises, promotes, or solicits for enrollment, credit, or award of an educational or occupational credential;

(d) An articulation agreement with a Kentucky licensed college or state-supported institution; or

(e) Advertising, promotional material, or public solicitation in any form that targets Kentucky residents through distribution or advertising in the state.

(10) "Out-of-state college" means a college that is chartered, organized, or has its principal location outside of Kentucky.

(11) "President" means the president of the Council on Postsecondary Education.

(12) "Unearned tuition" means the excess of cumulative collections of tuition and other instructional charges over the cumulative amount of earned tuition and other institutional charges prior to the first date of refund in accordance with the college's refund policy.

(13) "Unrestricted cash" means any cash or cash equivalents held by a college which are available to cover payments to students for any unearned tuition.

Section 2. General Requirements.

(1)(a) Except as provided in paragraph (b) of this subsection or subsection (7) of this section, an in-state or out-of-state college that is operating or soliciting in Kentucky shall be licensed.

(b) If a college is operating or soliciting in Kentucky solely for on-ground instruction at a location outside of Kentucky in which students leave Kentucky to attend, licensure shall not be required.

(2)(a) An out-of-state college shall be licensed separately for each instructional site in Kentucky.

(b) Except as provided in paragraph (c) of this subsection, an out-of-state college that is operating or soliciting using on-line instruction to Kentucky residents shall be considered to have an online campus which shall be licensed separately as an instructional site.

(c) Licensure shall not be required for an out-of-state college if the college:

1. Is only operating and soliciting under Section 1(9)(b) of this administrative regulation solely due to a faculty member residing in Kentucky and providing online instruction to Kentucky students; and

2. Has less than one (1) percent of its faculty members residing in Kentucky.

(3) A college awarding a certificate, diploma, associate degree, baccalaureate degree, master's degree, doctoral degree, or other degree, whether the degree is earned or honorary, shall be licensed. If a college's program is also required to be licensed or approved by another state agency as well as the Council on Postsecondary Education, the president shall attempt to coordinate the licensing function with that agency.

(4) A college shall offer only those programs, courses, and degrees, including honorary degrees, specifically authorized in the license.

(5) If a college ceases offering a licensed program, course, or degree, the college shall notify the president in writing and request that the program, course, or degree be removed from the college's license.

(6) Providing false or misleading information shall be grounds for denial of a license, or suspension or revocation of an existing license.

(7) A religious in-state college may operate or solicit in Kentucky if the college submits to the council an Application for Religious In-State College Letter of Exemption per KRS 164.947(2). The institution shall submit an application each year by the anniversary of its initial submission date. As part of the application, the institution shall verify compliance with the requirements established in this subsection.

(a) The institution shall be nonprofit, owned, maintained, and controlled by a church or religious organization which is exempt from property taxation under the laws of Kentucky.

(b) The name of the institution shall include a religious modifier or the name of a religious patriarch, saint, person, or symbol of the church.

(c) The institution shall offer only educational programs that prepare students for religious vocations as ministers or laypersons in the categories of ministry, counseling, theology, religious education, administration, religious music, religious fine arts, media communications, or social work.

(d) The titles of degrees issued by the institution shall be distinguished from secular degree titles by including a religious modifier that:

1. Immediately precedes, or is included within, any degree title, including an Associate of Arts, Associate of Science, Bachelor of Arts, Bachelor of Science, Master of Arts, Master of Science, Advanced Practice Doctorate, Doctor of Philosophy, or Doctor of Education degree; and

2. Is placed on the title line of the degree, on the transcript, and wherever[~~whenever~~] the title of the degree appears in official school documents or publications.

(e) The duration of all degree programs offered by the institution shall be consistent with Section 8(8)(b) of this administrative regulation.

(f) The institution shall comply with the truth in advertising requirements established in Section 8(11) of this administrative regulation.

(g)1. The institution shall disclose to each prospective student:

a. A statement of the purpose of the institution, its educational programs, and curricula;

b. A description of its physical facilities;

c. Its status regarding licensure;

d. Its fee schedule and policies regarding retaining student fees if a student withdraws;

e. Its refund policy on tuition and other instructional charges; and

f. A statement regarding the transferability of credits to and from other institutions.

2. The institution shall make the disclosures required by subparagraph 1. of this paragraph in writing at least one (1) week prior to enrollment or collection of any tuition from the prospective student. The required disclosures may be made in the institution's current catalog.

(h) The institution shall not seek to be eligible for state or federal financial aid.

Section 3. Licensure Application Procedures.

(1) An application for a license shall be submitted on the form entitled:

(a) Application for Licensure as an In-State, Non-Public Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020, if the applicant is an in-state college; or

(b) Application for Licensure as an Out-of-State Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020, if the applicant is an out-of-state college.

(2) An application shall be accompanied by a copy of the following:

(a) College charter;

(b) College catalog;

(c) College constitution and bylaws;

(d) Student enrollment application;

(e) Student contract or agreement;

(f)1. Documentation of accreditation, licensure, or approval by appropriate state, federal, and accrediting agencies; and

2. Disclosure of any prior loss or denial of:

a. Accreditation with the dates and reason for the loss or denial; or

b. Licensure or approval by an agency in this state or another state with the dates and reason for the loss or denial; [~~and~~]

(g) Disclosure of any former names of the college with the dates each former name was used.

Section 4. Site Visits.

(1) Within ninety (90) working days of the receipt of a full and complete application for a license, a supplementary application, or Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020, the president may conduct, or may have conducted, a site visit. Personnel conducting the site visit shall possess the expertise appropriate to the type of college to be visited. The purpose of a site visit shall be to make an assessment of a college using the standards for licensure as set forth in Section 8 of this administrative regulation.

(2) The president may conduct, or may have conducted, an announced or unannounced site visit of a licensed college during reasonable business hours to inspect the files, facilities, and equipment as well as conduct interviews to determine the college's compliance with this administrative regulation and KRS 164.945, 164.946, and 164.947.

(3) Failure to provide full access to the college's files, facilities, and equipment or prevention of interviews shall be grounds for denial of a license, or suspension or revocation of an existing license.

(4) Cost of site visits.

(a) Costs connected with a site visit and subsequent visits as may be necessary, such as travel, meals, lodging, and consultant honoraria, shall be paid by the college.

(b) The estimated cost of the site visit shall be paid by the college prior to the site visit.

(c) The final settlement regarding actual expenses incurred shall be paid by the college no later than thirty (30) days after receipt of the invoice.

(d) Failure to pay these costs shall be grounds for denial of a license, or suspension or revocation of an existing license.

Section 5. Action on Licensure Application.

(1) Within ninety (90) working days of the completion of the site visit, or within sixty (60) working days of the submission of a complete licensure application if a site visit is not conducted, the president shall do one (1) of the following:

(a) Issue a license for a period of no less than one (1) year, nor more than two (2) years;

(b) Deny the application for a license;

(c) Notify the applicant college of deficiencies which shall be corrected before a license is issued; or

(d) Issue a conditional license in accordance with subsection (3) of this section if the college has:

1. Not met all of the standards for licensure when[~~at the time~~] the application is filed; and

2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed two (2) years.

(2) If an institution fails to respond in writing to an official notification of deficiency within sixty (60) working days, it shall submit a new application and fee, as required by Section 15 of this administrative regulation, to apply for licensure.

(3) A conditional license shall not exceed a period of two (2) years and shall include the conditions the college shall meet in order for the college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.

(a) The college's failure to satisfy the conditions within the specified timeframe shall:

1. Result in automatic revocation of the conditional license; or

2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to the college's written request for an extension with supporting justification.

(b) If the college satisfies all the conditions with the timeframe specified, the president shall issue a license in accordance with subsection (1)(a) of this section.

Section 6. Supplementary Application Procedures.

(1)(a) A Supplementary Application for Change of Name of Institution Pursuant to 13 KAR 1:020 shall be submitted to the council at least ninety (90) days prior to the effective date of a change in the name of a college.

(b) A Supplementary Application for Change of Location of Principal Location of a College or Location of a Licensed Instructional Site in Kentucky Pursuant to 13 KAR 1:020 shall be submitted to the council at least ninety (90) days prior to the effective date of a change in the principal location of a college or the location of a licensed instructional site in Kentucky.

(c) A Supplementary Application for Change of Ownership or Governance Pursuant to 13 KAR 1:020 shall be submitted to the council at least ninety (90) days prior to the effective date of a change in ownership or governance of a college.

(d) An out-of-state college shall submit a Supplementary Application to Operate as an Out-of-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020 at least ninety (90) days prior to implementation of a change to offer an additional certificate, diploma, or degree program, major, or other concentration or specialty at an instructional site.

(e) A Supplementary Application to Operate as an In-State Nonpublic Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020 shall be submitted by an in-state college at least ninety (90) days prior to the effective date of:

1. A change to offer an additional certificate, diploma, or degree program, major, or other concentration or specialty at the

main campus; or

2. The establishment of an instructional site away from the main campus of an in-state college for the purpose of offering courses for college credit which comprise at least fifty (50) percent[~~twenty-five (25) percent~~] of the course requirements for a degree program.

(f) A college shall submit a Supplementary Application for Administrative Site, Recruitment Office, or Advising Center Pursuant to 13 KAR 1:020 at least ninety (90) days prior to the establishment of an administrative site, recruitment office, or advising center in Kentucky, or the change of location of a licensed administrative site, recruitment office, or advising center in Kentucky, if the site, office, or center is not part of a licensed instructional site or proposed instructional site for which the college is seeking licensure.

(g) A college shall submit a Supplementary Application for Notification of Change in Accreditation or Licensure Status Pursuant to 13 KAR 1:020 within thirty (30) days following action by an accrediting agency or another state licensing agency which results in:

1. A college being placed in a probationary status;

2. A college losing accreditation or licensure; or

3. A college being denied accreditation or licensure.

(2) A site visit may be conducted as part of the supplementary application process in accordance with Section 4 of this administrative regulation.

(3) Failure to submit a complete and accurate supplementary application, if required, shall be sufficient cause for denial of a license, or suspension or revocation of an existing license. The president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 7. Action on Supplementary Applications.

(1) Within sixty (60) working days of the submission of a complete supplementary application if a site visit is not conducted, or within ninety (90) working days of the completion of a site visit, the president shall do one (1) of the following:

(a) Approve the supplementary application and amend the current license without changing the renewal date;

(b) Deny the supplementary application without amendment to the college's license;

(c) Suspend or revoke the college's license;

(d) Notify the applicant college of deficiencies which shall be corrected before the supplementary application is approved and the license is amended; or

(e) Issue a conditional license in accordance with subsection (3) of this section if the college has:

1. Not met all of the standards for licensure when[~~at the time~~] the application is filed; and

2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed two (2) years.

(2) If an institution fails to respond in writing to an official notification of deficiency within sixty (60) working days, it shall submit a new application to apply for licensure.

(3) A conditional license shall not exceed a period of two (2) years and shall include the conditions the college shall meet in order for the college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.

(a) The college's failure to satisfy the conditions within the specified timeframe shall:

1. Result in automatic revocation of the conditional license; or

2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to the college's written request for an extension with supporting justification.

(b) If the college satisfies all the conditions with the timeframe specified, the president shall amend the current license in accordance with subsection (1)(a) of this section.

Section 8. Standards for Licensure. A college shall meet the requirements and standards established in this section in order to be licensed.

(1) Financial requirements. The college shall adhere to generally accepted accounting practices and present evidence of financial stability, including the following:

(a) Financial statements including:

1. A statement of financial position of unrestricted net assets and liabilities, including foundation and trust agreements;

2. An audit report prepared by an independent certified public accountant for each corporation of the college; and

3. If available, audit reports for the past three (3) years;

(b) The name of a bank or other financial institution used by the college as a reference;

(c) A statement from the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the U.S. Department of Education related to programs administered by that department that the college is in good standing; and

(d) An annual operating budget for the college.

(2) Agents. A college shall be responsible for the actions of its agents if[~~when~~] acting on behalf of the college.

(3) Guarantee of refund of unearned tuition. A college shall guarantee the refund of any unearned tuition held by the college as established in this subsection.

(a) Except as provided in paragraph (d) of this subsection, an in-state college shall:

1. Secure and maintain a surety bond equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year, executed by a surety company qualified and authorized to do business in Kentucky, and made payable to the Council on Postsecondary Education;

2. Maintain an unrestricted cash reserve equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

3. Provide a letter of credit equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year.

(b) An out-of-state college shall secure and maintain a surety bond:

1. That is:

a. Equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; and

b. At least $10,000;

2. Executed by a surety company qualified and authorized to do business in Kentucky; and

3. Made payable to the Council on Postsecondary Education.

(c) A college applying for a license for the first time shall estimate the amount of unearned tuition based on projected enrollment and tuition and other instructional charges.

(d) An in-state college licensed continuously by the council for:

1. Five (5) to ten (10) years shall maintain coverage by surety bond, letter of credit, or unrestricted cash reserve for ten (10) percent of its annual total net tuition and fees collected by the college in its most recently completed fiscal year; or

2. Ten (10) years or more shall maintain coverage by surety bond, letter of credit, or unrestricted cash reserve for five (5) percent of its annual total net tuition and fees collected by the college in its most recently completed fiscal year.

(e) A college shall provide a letter from an independent certified public accountant confirming that the college is in compliance with this subsection.

(4) Notice required.

(a) If a surety bond is terminated, a college shall notify the president and the license shall automatically expire with the bond unless a replacement bond is provided without a lapse in bonding.

(b) An in-state college using an unrestricted cash reserve or letter of credit to satisfy the provisions of subsection (3) of this section shall notify the president if the unrestricted cash reserve or letter of credit falls below the required amount, and the college shall obtain a surety bond for the required amount.

(c) A college shall notify the president within ten (10) days of the college receiving written notice from the U.S. Department of Education of placement on heightened cash monitoring status or

calculation of college's financial responsibility composite score at below 1.0. If an in-state college is using unrestricted cash reserve to satisfy subsection (3) of this section, it shall within thirty (30) days of either event:

1. Obtain a surety bond or letter of credit in the required amount until the college is satisfactorily removed from heightened cash monitoring status by the U.S. Department of Education or the college's financial responsibility composite score is 1.0 or higher; or

2. Transfer the unrestricted cash reserve to the Council in the required amount to be held on behalf of the college, which the Council shall return once the college is satisfactorily removed from heightened cash monitoring status by the U.S. Department of Education, the college's financial responsibility composite score is 1.0 or higher, or once all unearned tuition claims have been paid.

(d) Upon notice to the college, the Council may call in a letter of credit upon any valid claim of unearned tuition in the amount of the claim, or for the full amount of the letter if necessary to protect access to those funds. If the full amount of the letter is called, the Council shall return any funds remaining after claims have been paid, either to the bank or the college, as appropriate, after one (1) year from the date of closure of the college.

(e) A college shall notify the president within ten (10) days of the college receiving notice from an accrediting agency or any state or federal agency that the college is the subject of any investigative action**[, complaint,]** or disciplinary matter with the accrediting agency or state or federal agency.

(5) Personnel requirements.

(a) The college shall furnish information regarding the administrative officers, the directors, the owners, and the faculty, as required by the [~~appropriate~~] application form.

(b) The chief administrator shall hold at least an earned baccalaureate degree from an accredited or licensed college and shall have sufficient experience to qualify for the position.

(c) Faculty members.

1. For a course or program licensed by the council prior to January 1, 2014:

a. Effective until December 31, 2015, faculty members shall possess academic, scholarly, and teaching qualifications similar to those required for faculty in accredited colleges that offer degrees at comparable levels.

b. Effective beginning on January 1, 2016, faculty members shall meet the requirements established in paragraph (d) of this subsection.

2. For a course or program not licensed by the council prior to January 1, 2014, faculty members shall meet the requirements established in paragraph (d) of this subsection when[~~at the time~~] the course or program is licensed.

(d) Faculty member qualifications.

1. Each degree possessed by a faculty member shall be from an institution accredited by an accrediting agency recognized by the U.S. Department of Education or the Council for Higher Education Accreditation.

2. To teach a certificate or diploma course, a faculty member shall have:

a. A bachelor's degree; or

b. A high school diploma or GED along with one (1) or more of the following:

(i) Completed a training or degree program in the applicable occupational area;

(ii) Demonstrated outstanding professional experience;

(iii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iv) Professional licensure or certification in the field.

3. To teach an associate degree course not designed for transfer to a baccalaureate degree, a faculty member shall hold:

a. A bachelor's degree in the discipline being taught; or

b. An associate's degree in the discipline being taught along with one (1) or more of the following:

(i) Demonstrated outstanding professional experience;

(ii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iii) Professional licensure or certification in the field.

4. To teach a general education course, a faculty member shall hold:

a. A master's degree in the discipline being taught; or

b. A master's degree with a minimum of eighteen (18) graduate semester hours in the discipline being taught.

5. To teach a baccalaureate course or an associate course designed for transfer to a baccalaureate degree, a faculty member shall hold:

a. A master's degree in the discipline being taught;

b. A master's degree with a minimum of eighteen (18) graduate semester hours in the discipline being taught; or

c. A baccalaureate degree in the discipline being taught along with one (1) or more of the following:

(i) Demonstrated outstanding professional experience;

(ii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iii) Professional licensure or certification in the field.

6. To teach a graduate course, a faculty member shall hold:

a. An earned doctorate or terminal degree in the discipline being taught or in a related discipline; or

b. A master's degree in the discipline being taught along with one (1) or more of the following:

(i) Demonstrated outstanding professional experience;

(ii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iii) Professional licensure or certification in the field.

(e) There shall be a sufficient number of full-time faculty to ensure continuity and stability of the educational program.

(f) Teaching loads of faculty members shall be consistent with recognized educational practices, and shall be appropriate to the field, the variety of courses assigned, class size, and other related factors.

(6) Facilities and equipment.

(a) An instructional program shall be conducted in a facility in accordance with the requirements specified on the [~~appropriate~~] application form.

(b) Enrollment shall not exceed the design characteristics of the facilities.

(c) A college shall have facilities and equipment that are:

1. Maintained and operated in compliance with the safety and health requirements set forth in local, city, and county ordinances, and federal and state law; and

2. Adequate and appropriate for instruction in classrooms and laboratories consistent with accrediting and licensing requirements.

(7) Library resources. The library shall[~~be appropriate~~] to support the programs offered by the college in accordance with this subsection.

(a) A college, through ownership or formal agreements, shall provide and support student and faculty access to adequate library collections, and to other learning and information resources where courses and programs are offered. Library resources shall be appropriate to the degree level offered by the college, and shall be sufficient to support all educational, research, and public service programs.

(b) A college that does not provide its own library facilities, but instead relies on another institution, shall demonstrate that it has permission to utilize the resources of the other institution, by providing a copy of the written agreement to the president with the[~~at the time of~~] license application, and prior to the offering of any courses.

(c) A college that is dependent on another college or library for library resources shall make the extent of the dependence and the details of the agreements clear both to the president and to students and faculty.

(d) Library expenditures, expressed as a percentage of the total educational and general budget, shall be consistent with the percentage of library expenditures commonly observed in accredited colleges of similar types.

(e) Library staff shall be qualified as required for accredited colleges of similar types.

(f) Sufficient seating and work space for a reasonable proportion of the faculty and students to be accommodated at one (1) time shall be provided as observed in accredited colleges of similar types.

(g) The library shall provide a safe and secure physical and

virtual environment conducive to study and research[~~The physical environment of the library shall be conducive to reflective intellectual pursuits common to institutions of higher learning~~].

(8) Curriculum. Earned degrees awarded by a college shall be bona fide academic degrees and the courses offered in degree programs shall be of collegiate quality as determined by the president using the criteria established in this section.

(a)1. Except as provided in subparagraph 2. of this paragraph, a course offered in a degree program shall be consistent with a course that is generally transferable for credit among accredited colleges where the program is at a corresponding degree level, or for credit toward the baccalaureate degree if a program is at the associate degree level.

2. A course may be offered that is not transferable based on the uniqueness of a program.

(b) A college shall require a minimum of:

1. Sixty (60) student credit hours for an associate degree;

2. 120 student credit hours for a baccalaureate degree; or

3. Thirty (30) student credit hours for a post-baccalaureate, graduate, or first professional degree.

(c) A minimum of twenty-five (25) percent of the student credit hours required for a degree shall be earned through instruction offered by:

1. The college awarding the degree; or

2. A college that is:

a. A party to a joint, cooperative, or consortia agreement; and

b. Either:

(i) Licensed by the Council on Postsecondary Education; or

(ii) A Kentucky state-supported postsecondary education institution.

(d) A majority of the student credit hours required for a graduate degree may be met through a joint, cooperative, or consortia agreement in which the instruction is offered by a college that is:

1. A party to the agreement; and

2. Either:

a. Licensed by the Council on Postsecondary Education; or

b. A Kentucky state-supported postsecondary education institution.

(e) A college shall have a systematic program of curriculum revision in order to maintain the general standards of accredited colleges with similar programs.

(f) A college shall have a program of evaluation that includes a periodic assessment of the changes in student achievement.

(9) General education.

(a) A minimum of fifteen (15) student credit hours for associate degree programs and thirty (30) student credit hours for baccalaureate degree programs shall be earned in general education, including science, mathematics, social and behavioral sciences, and humanities. A college which offers an interdisciplinary general education program, a block-type program, or other unique general education program shall be considered to be in compliance with the general education requirement if the president determines that the program content and distribution are [~~appropriately~~] related to the degree and institutional purposes.

(b) A new college, or any existing college which initiates a new associate degree or baccalaureate degree program or major, or other concentration or specialty, after March 5, 2010, shall comply fully from the outset with the general education requirements.

(10) Program supervision and instructional support. Regardless of location, type of program, method of instruction, or other characteristics, an instructional program for which degree credit is awarded shall include:

(a) Adequate supervision by the college; and

(b) Instructional[~~Other instructional~~] support necessary to maintain the program.

(11) Truth in advertising. A college shall meet the requirements established in this subsection regarding advertising.

(a) Advertisements, announcements, or promotional material of any kind which are distributed in Kentucky shall not contain any statements that are untrue, deceptive, or misleading with respect to the college, its personnel, its services, or the content, accreditation status, or transferability of its courses or degree programs.

(b) Advertisements, announcements, or other materials produced by or on behalf of the college shall not indicate that the college is "supervised", "recommended", "endorsed", or "accredited" by the Commonwealth of Kentucky, by the Council on Postsecondary Education, or by any other state agency. A statement using the name of the Council on Postsecondary Education, if any, shall be in exactly the following form, based on which statement is applicable to the college:

1. "(Name of College) is licensed by the Kentucky Council on Postsecondary Education."; or

2. "(Name of College) has a religious exemption from the Kentucky Council on Postsecondary Education to operate or solicit in Kentucky."

(12) Recruitment and enrollment procedures. A college shall furnish the following to each student prior to enrollment:

(a) The college's policies on grades, attendance, and conduct;

(b) A description of the instructional program;

(c) A detailed schedule of all charges, rentals, and deposits;

(d) The schedule of refunds of all charges, rentals, and deposits; and

(e) The student enrollment application, contract, or agreement.

(13) Student affairs.

(a) Students admitted to the college shall have completed a state-approved secondary school program or its equivalent unless dually enrolled in high school.

(b) The college shall provide academic counseling by faculty or staff to each student when admitted[~~at the time of admission~~] and throughout the program.

(c) The college shall make assistance and counseling available to each student who completes a technical or vocational program for the purpose of assisting the student with an appropriate job placement or with transfer.

(d) The college shall maintain sufficient records for each student to provide an understanding of his or her background, to record progress through the instructional program, and for reference purposes. By January 1, 2022, the college shall maintain all student records in an electronic format that is searchable and readily transferable consistent with industry standards. For a college not licensed by the Council prior to January 1, 2020, the college shall meet this requirement when the college is licensed.

(e) Administrative officers of the college shall be knowledgeable of the federal and state laws and administrative regulations concerning the disclosure of student information and shall comply with those laws and administrative regulations.

(f) A college shall make provision for the maintenance of student records if the college ceases operations in accordance with KRS 164.020(23). The location of student records shall be approved in advance by the president.

(14) College policies.

(a) The college shall maintain records in an orderly manner and make them available for inspection by the president or his or her designated representative.

(b) A catalog shall be published and distributed at least every two (2) years and shall include general information, administrative policies, and academic policies of the college including:

1. General information:

a. Official name and address of the college, name of the chief administrative officers, members of the governing body, and names of principal owners;

b. The college's calendar for the period covered by the catalog including beginning and ending dates of each term or semester, registration and examination dates, legal holidays, and other important dates;

c. Names of faculty, including relevant education and experience; and

d. Full disclosure of the philosophy and purpose of the college;

2. Administrative policies:

a. Admissions policies and procedures, applicable to the various programs, including policies regarding granting of credit for previous education;

b. Policies and procedures regarding student conduct and behavior and the process for dealing with cases which culminate in probation or dismissal;

c. Schedules for all tuition and instructional charges, and refund schedules for the tuition and instructional charges;

d. Statement of financial aid available to students; and

e. Procedures for obtaining transcripts in a timely fashion and at reasonable cost; and

3. Academic policies, including:

a. Policy on class attendance;

b. Description of grading system;

c. Description of the degree, diploma, certificate, or other programs, including the course requirements and the time normally required to complete each degree, diploma, certificate, or other program; and

d. Full description of the nature and objectives of all degrees offered.

(c) Refund policy on tuition and other instructional charges. The refund policy shall meet the minimum requirements established in this paragraph.

1. If tuition and other instructional charges are collected in advance of enrollment and the student fails to enroll, the college shall retain not more than $100, or not more than ten (10) percent of the tuition and other instructional charges for a term or semester, whichever is less.

2.a. Except as provided in clause b. of this subparagraph, tuition and other instructional charges shall be charged by the enrollment period, and the student shall not be obligated for tuition or other instructional charges relating to an enrollment period that had not begun when the student withdrew.

b. The president may approve program tuition for a specific program at a college if a student may only enroll at the beginning of the program sequence and shall remain in phase. If program tuition is approved, the college shall refund tuition and other instructional charges in accordance with its published refund policy that considers both the coursework completed prior to withdrawal and the coursework that remains.

3. If a student withdraws from the college, or if a student fails to attend classes for a period of thirty (30) days during which classes are in session, the college shall officially withdraw the student from the college and shall refund an amount reasonably related to the period for which the student is not enrolled and shall refund 100 percent of all other tuition and other fees collected by the college for subsequent enrollment or registration periods unless the student is enrolled in a program for which program tuition is charged as specified in subparagraph 2. of this paragraph.

a. After completion of fifty (50) percent of the enrollment period, the college shall not be required to make refunds of tuition or other fees for that period.

b. In all other cases, including illness or accident, the college shall make a refund settlement.

c. Refunds shall be made within thirty (30) days after notification of withdrawal has been received by the college.

4. If a college is accredited by an accrediting agency which has a specific refund policy which is more favorable to the student, that policy shall be followed.

5. An out-of-state college shall refund in accordance with this section unless its policy is more favorable to the student, in which case the latter shall be followed.

Section 9. Failure to Apply for a License.

(1) If a college which is subject to this administrative regulation fails to apply for a license, the president shall notify the college by registered mail of the requirement to obtain a license.

(2) If a license application is not then received within sixty (60) days of notification by the president, the president shall require the chief administrative officer to appear for a hearing as provided in Section 14 of this administrative regulation.

(3) If the chief administrative officer does not appear for the hearing, the president shall refer the case to the appropriate county attorney for enforcement.

Section 10. Annual Maintenance of a College's License and Renewal of a College's License.

(1) A college shall submit an Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020 to the president by April 1 of each year.

(a) In an odd numbered year, the application shall contain the following information:

1. Financial Information:

a. A statement from the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the United States Department of Education related to programs administered by that department that the college is in good standing;

b. A letter prepared by an independent certified public accountant confirming that the college is in compliance with Section 8(3) of this administrative regulation;[~~and~~]

c. Financial statement including assets and liabilities and an audit report prepared by an independent certified public accountant within the last year.

2. Institutional information:

a. Name and address of college;

b. Chief executive officer's name, title, address, phone number, fax number, and email address;

c. Institutional liaison's name, title, address, phone number, fax number, and email address;

d. A current list of the college's agents;

e. Copies of articles of incorporation, charter, constitution, and by-laws if there have been any changes to the documents within the last two (2) years; and

f. A copy of each articulation agreement the college has with a Kentucky licensed college or state-supported institution entered into or changed within the last two (2) years;

3. Accreditation status:

a. If the college is accredited by an accrediting agency, verification of the college's accreditation status and documentation of any notice of disciplinary action, warning, or probation from any state, federal, or accrediting agency within the past two (2) years; or

b. If an in-state[~~the~~] college is not accredited by an accrediting agency, a statement indicating its intention to receive accreditation and its timeline for attainment[~~if, when, and from whom the college will seek accreditation~~].

4. Tuition for the current enrollment period per credit hour, specifying semester hour, quarter hour, or other basis, and per full-time student;

5. A copy of the college's current catalog;

6. For an in-state college, a list of all licensed instructional sites away from the main campus of the in-state college for the purpose of offering courses for college credit which comprise at least fifty (50) percent[~~twenty-five (25) percent~~] of the course requirements for a degree program, including the name and title of the primary contact of the off-campus site, address, phone number, and program or programs by CIP code offered at the site, or course or courses if not offering an entire degree program at the site;

7. Program information:

a. Changes, if any, in program requirements for each program within the last two (2) years including admission requirements, courses required, and the number of credit hours required for the program or major;

b. Results of the most recent program evaluation;

c. Methods used to assess student achievement;

d. Results of the most recent assessment of student achievement; and

e. A list of programs withdrawn within the last two (2) years in which there are no longer students enrolled including program title, degree level, CIP code, and address where the program is no longer being offered;

8. Faculty information: Faculty credentials[~~Vitae~~] for each program faculty member employed within the last two (2) years;

9. Facilities information: Verification of compliance with all applicable local, state, and federal safety and fire codes; and

10. Library information regarding the library collection and budget, and lease, contract, or letter of agreement authorizing use of another library collection, if any.

(b) In an even numbered year, the application shall only contain the information required by paragraphs (a)1.b. and d., and (a)2.a., b., and c., of this subsection. An institution shall provide any other information listed in paragraph (a) of this subsection upon request of the council.

(2) The president may conduct, or may have conducted, a site visit as part of the annual maintenance of a license or renewal of a

license process in accordance with Section 4 of this administrative regulation.

(3) Within ninety (90) working days of the submission of a complete and accurate Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020 if a site visit is not conducted, or within ninety (90) working days of the completion of a site visit, the president shall:

(a) Notify the college of any deficiencies which shall be corrected before the college's license is maintained or renewed;

(b) Deny maintenance or renewal of the college's license;

(c) Maintain the college's license without changing the college's license renewal date;

(d) Renew the college's license to June 30 of the next year; or

(e) Issue a conditional license in accordance with subsection (4) of this section if the college has:

1. Not met all of the standards for licensure when [~~at the time~~] the application is filed; and

2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed one (1) year.

(4) A conditional license shall not exceed a period of one (1) year and shall include the conditions the college shall meet in order for the college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.

(a) The college's failure to satisfy the conditions within the specified timeframe shall:

1. Result in automatic revocation of the conditional license; or

2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to the college's written request for an extension with supporting justification.

(b) If the college satisfies all the conditions with the timeframe specified, the president shall renew the license in accordance with subsection (3)(d) of this section.

(5) A college's failure to submit a complete and accurate Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020 shall be grounds for denial of a license, or suspension or revocation of an existing license, and the president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 11. Required Data Submission.

(1) A licensed college shall submit student attendance and performance data in an electronic format. The required data fields, the format and method of submission, and the dates for submission shall be in accordance with the Licensure Compliance Reporting Manual.

(2) The president may conduct, or may have conducted, a site visit as part of the data submission process in accordance with Section 4 of this administrative regulation.

(3) A college's failure to submit complete, timely, and accurate data shall be sufficient grounds for denial of a license, or suspension or revocation of an existing license, and the president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 12. License Expiration.

(1) A license shall automatically expire if the college ceases operating or soliciting.

(2) A college that ceases operating or soliciting shall comply with Section 8(13)(f) of this administrative regulation and KRS 164.020(23).

Section 13. Consumer Complaint Procedure. A person with a complaint or grievance involving misrepresentation against a college licensed under this administrative regulation shall make a reasonable effort to resolve the complaint or grievance directly with the college. If a mutually satisfactory solution cannot be reached, the procedures established in this section shall be followed. (1) A person shall submit a written complaint to the president which contains evidence relevant to the complaint and documentation that a reasonable effort was made to resolve the complaint directly with the college.

(2) The president shall require an institution to file a written response setting forth the relevant facts concerning the consumer complaint, including a statement on the current status of the complaint, and any resolution of the complaint.

(3) The president shall review the facts as presented and may intervene to bring the matter to a satisfactory conclusion through facilitation, but the facilitation shall not include legal action on behalf of any party.

Section 14. Hearings and Appeals.

(1) The president shall, for cause, require the chief administrative officer, or other officers, of a college to appear for a hearing within thirty (30) working days of notice in order to determine the facts if the president has determined that:

(a) There is sufficient cause for a suspension, a revocation of a license, or placement of a college's license in a probationary status, based upon the college's failure to comply with this administrative regulation; or

(b) A college which is subject to this administrative regulation fails to apply for a license.[~~there is sufficient cause for a suspension, a revocation of a license, or placement of a college's license in a probationary status or if a college which is subject to this administrative regulation fails to apply for a license~~].

(2) The officer, or other officers, of the college may be accompanied at the hearing by counsel of their own choosing and at their expense.

(3) Within thirty (30) working days after a hearing is held or if the college fails to appear for the hearing, the president shall reach a determination and shall issue findings, in writing, to the council and to the chief executive officer of the college.

(4) If it is determined that the public interest requires that sanctions be imposed, the president shall:

(a) Impose one (1) of the following sanctions:

1. Place the college's license in a probationary status for a designated period not to exceed one (1) year while deficiencies are being corrected;

2. Suspend the college's license for a period not to exceed one (1) year; or

3. Revoke the college's license; or

(b) Refer the case to other officials for appropriate legal action.

(5) A college which is sanctioned, whether the sanction is probation, suspension of license, or revocation of license, shall comply with the terms of the sanction.

(6) A college may appeal the actions of the president regarding the denial of issuance of a license or license renewal or the imposition of sanctions according to the procedures established in this subsection.

(a) A college shall notify the president of the intent to appeal an action within fourteen (14) days of the receipt of the letter notifying the college of the action taken.

(b) The president shall request that the Office of Administrative Hearings appoint a hearing officer who shall conduct an administrative hearing consistent with the provisions of KRS 13B.005-13B.170.

(c) The appeal shall be presented in writing no later than sixty (60) days following the receipt of notification of intent to appeal. The appeal shall be considered on the written record alone.

(d) The appeals officer shall review findings of fact, consider testimony, draw conclusions, and formulate a recommendation consistent with the facts and this administrative regulation.

(e) Upon completion, the report of the appeals officer shall be forwarded to the college and to the president of the Council on Postsecondary Education.

(f) Within thirty (30) working days of receiving the report of the appeals officer, the president shall take one (1) of the following actions:

1. Issue a license;

2. Renew the license;

3. Impose one (1) of the sanctions authorized in this section; or

4. Refer the case to other officials for appropriate action.

Section 15. License Fees.

(1) The president shall assess a fee in accordance with the

Kentucky Licensure Fee Schedule.

(2) Failure to pay a fee shall be sufficient grounds for denial of a license, or suspension or revocation of an existing license.

Section 16. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Licensure as an In-State, Non-Public Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", June 2013;

(b) "Application for Licensure as an Out-of-State Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", June 2013;

(c) "Supplementary Application for Change of Name of Institution Pursuant to 13 KAR 1:020", June 2013;

(d) "Supplementary Application for Change of Location of Principal Location of a College or Location of a Licensed Instructional Site in Kentucky Pursuant to 13 KAR 1:020", June 2013;

(e) "Supplementary Application for Change of Ownership or Governance Pursuant to 13 KAR 1:020", June 2013;

(f) "Supplementary Application to Operate as an Out-of-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", June 2013;

(g) "Supplementary Application to Operate as an In-State Nonpublic Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", July 2019[~~June 2013~~];

(h) "Supplementary Application for Administrative Site, Recruitment Office, or Advising Center Pursuant to 13 KAR 1:020", June 2013;

(i) "Supplementary Application for Notification of Change in Accreditation or Licensure Status Pursuant to 13 KAR 1:020", June 2013;

(j) "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020", June 2013;

(k) "Licensure Compliance Reporting Manual", September 8, 2009;

(l) "Kentucky Licensure Fee Schedule", June 2013; and

(m) "Application for Religious In-State College Letter of Exemption per KRS 164.947(2)", September 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHERRILL ZIMMERMAN, Chair
TRAVIS POWELL, VP & General Counsel

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 14, 2019 at 4 p.m.

CONTACT PERSON: Sarah Levy, Executive Director of Postsecondary Licensing, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 320, Frankfort, Kentucky 40601, phone 502-573-1555, fax 502-573-1535, email sarah.levy@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sarah Levy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets the standards and rules related to the licensing of private postsecondary education institutions, both for profit and nonprofit, offering a bachelor's degree and above.

(b) The necessity of this administrative regulation: KRS 164.945 through 164.947 requires the Council on Postsecondary Education to license these institutions as a protection for Kentucky citizens and to protect bona fide institutions from those who engage in fraudulent practices, unfair competition, or substandard educational programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.947 states that the Council on Postsecondary Education, by regulation, shall adopt standards and procedures for the licensing of colleges.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation sets out the standards institutions must meet in order to be licensed to operate in Kentucky. It also defines the process for new license applications, for amendments to licenses, and for license renewals.

(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: First, in-state colleges will be required to receive approval for an instructional site where 50% of an academic program is offered, rather than 25%. Second, colleges will be required to provide notice to the Council when certain measures of federal financial aid distress are triggered. Third, when those measures are triggered, in-state colleges using unrestricted cash to meet their unearned tuition coverage obligations will be required to obtain a surety bond or letter of credit or transfer the cash to the Council until those measures are no longer triggered. Fourth, the process for the Council to call in a letter of credit to protect student claims for unearned tuition is outlined. Fifth, institutions will be required to provide notice that they are the subject of any investigation, complaint, or disciplinary matter with any accreditors or state or federal agencies within 10 days of their receipt of notice. Sixth, by January 1, 2022 all licensed colleges shall maintain all student records in an electronic format that is searchable and readily transferable consistent with industry standards. New colleges seeking licensure shall meet this requirement as a part of initial licensure. Seventh, as part of the annual application for licensure, colleges must provide documentation of any notice of disciplinary action, warning or probation from any state, federal, or accrediting agency within in the past two years. And finally, technical revisions are being made.

(b) The necessity of the amendment to this administrative regulation: Moving the threshold of site approval for in-state institutions from 25% to 50% of a program being offered at a location aligns with institutional accreditor requirements. Requiring notice, and in some instances action, when certain measures of federal financial aid distress are triggered allows the Council to better secure repayment of unearned tuition for students and to allow the Council to intervene, if necessary, to better protect students in the event of potential institutional closure. Providing information related to action by an institution's accreditors or other governmental agencies will allow the Council to know if those agencies have identified any issues with the institution that might also be in violation of the Council's licensure requirements. Requiring that institutions maintain electronic student records, particularly transcripts, helps protect against the loss of records due to physical damage, helps ensure the orderly maintenance of such records, and makes them more easily transferrable in the event of closure.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms with the requirements of KRS 164.947 by helping to ensure that licensed institutions provide a quality educational experience for Kentucky students.

(d) How the amendment will assist in the effective administration of the statutes: The amendment helps to better protect institutions in the event of school closure and to better track issues arising with other authorizing entities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Council currently licenses 87 institutions with multiple licensed instructional sites and three (3) new initial licensure applications are currently under review.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, 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: Colleges will be required to provide notice to the Council when certain measures of federal financial aid distress are triggered. When those measures are triggered, in-state colleges using unrestricted cash to meet their unearned tuition coverage obligations will be required to obtain a surety bond or

letter of credit or transfer the cash to the Council until those measures are no longer triggered. As part of the annual application for licensure, colleges must provide documentation of any notice of disciplinary action, warning or probation from any state, federal, or accrediting agency within in the past two years. A college shall notify the president within ten (10) days of the college receiving notice from an accrediting agency or any state or federal agency that the college is the subject of any investigative action, complaint, or disciplinary matter with the accrediting agency or state or federal agency. Existing licensed colleges will be required to digitize student records by January 1, 2022.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be incurred to digitize records if not already in digital format. From surveys conducted, licensed institutions have at least some records digitized. Costs will vary depending on how many paper records need to be scanned. If an institution hits one of those financial distress markers and are using unrestricted cash to cover unearned tuition, they will be required to pay a fee to obtain a surety bond. Most institutions already use these and it is our understanding that the cost is usually $5,000 or less. Otherwise, costs of compliance should be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Digitizing student records will assist institutions in the protection, management, and organization of student records.

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

(a) Initially: We estimate that there will be no additional cost in implementing the proposed changes to the regulation.

(b) On a continuing basis: We estimate that there will be no additional costs on a continuing basis to implement the proposed changes to the regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: License fees and General Fund 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: No. Implementation of this amendment does not require an increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes. This regulation assesses fees but they will not be increased, directly or indirectly, by this amendment.

(9) TIERING: Is tiering applied? No, tiering is not applied to this amendment.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? CPE is responsible for implementation, but this regulation only applies to private colleges and universities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.947 and 164.020(37)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? We estimate revenue from university and college renewals at $105,000 per year. In most prior years, these renewal fees combined with initial application fees were greater than expenses, creating a reserve to cover costs in case initial applications were lower than expected.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See 3(a).

(c) How much will it cost to administer this program for the first year? Approximately $355,500.

(d) How much will it cost to administer this program for subsequent years? Approximately $355,500.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: N/A

**AUDITOR OF PUBLIC ACCOUNTS**
**(As Amended at ARRS, November 12, 2019)**

**45 KAR 1:050. Audits of fiscal courts.**

RELATES TO: KRS 43.070, 43.075, 64.810, 68.210, 31 U.S.C. 7501-7507

STATUTORY AUTHORITY: KRS 43.075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 43.075 requires the Auditor of Public Accounts to promulgate administrative regulations developing uniform standards and procedures for conducting, and uniform formats for reporting, audits of the funds contained in county budgets (fiscal courts). This administrative regulation establishes the auditing standards, procedures, and formats for fiscal court audits.

Section 1. Definition. "Generally accepted government auditing standards" means the "Government Auditing Standards" issued by the Comptroller General of the United States.

Section 2. Auditing Standards, Procedures, and Formats. The financial and compliance audit of the funds contained in each county's budget shall be conducted in accordance with:

(1) Auditing standards generally accepted in the United States of America, referenced in 201 KAR 1:300, Section ***3[5(1)(a)]***;

(2) Generally accepted government auditing standards, referenced in 201 KAR 1:300, Section ***3[5(1)(b)]***; and

(3) Fiscal Court Audit Guide, issued by the Auditor of Public Accounts, August 9, 2019[~~July 20, 2018~~].

Section 3. Auditor's Independent Judgement. The requirements of this administrative regulation shall not be interpreted in a manner that restricts the independent judgment of a certified public accountant or the Auditor of Public Accounts.

Section 4. Audit Objective. (1) The primary objective of an audit of a fiscal court shall be an audit report that provides an opinion on whether the financial statements of a fiscal court are presented fairly, in all material respects, in accordance with a basis of accounting prescribed or permitted by the Department for Local Government, which is the regulatory basis of accounting or Generally Accepted Accounting Principles (GAAP).

(2) Any audit report of a fiscal court that is required to comply with the requirements of the Single Audit Act Amendments of 1996 and Title 2 ***[~~U.S. Code of Federal Regulations (~~]***C.F.R.***[)]*** Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), shall include a statement concerning whether:

(a) The Schedule of Expenditure of Federal Awards is fairly stated, in all material respects, in relation to the financial statements taken as a whole; and

(b) The fiscal court has complied, in all material respects, with the requirements applicable to each of its major federal programs.

(3) An auditor shall make tests sufficient to determine whether:

(a) The fiscal court has complied with the requirements of the uniform system of accounts adopted under KRS 68.210;

(b) Receipts have been accurately recorded by source;

(c) Expenditures have been accurately recorded by payee; and

(d) The county has complied with all other legal requirements relating to the management of public funds.

Section 5. Allowance of Audit Fees; Acceptance of Report. (1)

Fees for county fiscal court audits shall be allowable as reasonable and necessary expenses of a county if the independent accountant's examination has been performed and reported in compliance with the standards, procedures, and formats promulgated by this administrative regulation.

(2) A county shall obtain written approval of an audit report from the Auditor of Public Accounts prior to the:

(a) Release of an audit report; and

(b) Payment of fees for a fiscal court audit.

(3) Failure by an independent certified public accountant to comply with the Fiscal Court Audit Guide and this administrative regulation shall disqualify him from conducting fiscal court audits.

Section 6. Incorporation by Reference. (1) The "Fiscal Court Audit Guide," Auditor of Public Accounts, August 9, 2019[~~July 20, 2018~~] is incorporated by reference.

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Auditor of Public Accounts, 209 Saint Clair Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5:00 p.m.

ANDREW G. ENGLISH, Executive Director

For MIKE HARMON, Auditor of Public Accounts

APPROVED BY AGENCY: August 7, 2019

FILED WITH LRC: August 12, 2019 at 3 p.m.

CONTACT PERSON: Andrew G. English, General Counsel, Auditor of Public Accounts, 209 St. Clair Street, Frankfort, Kentucky 40601; phone 502-209-2863; fax 502-564-2912; email Andrew.English@ky.gov.

**FINANCE AND ADMINISTRATION CABINET**
**Office of the Secretary**
**(As Amended at ARRS, November 12, 2019)**

**200 KAR 6:015. Real property inventories.**

RELATES TO: KRS 45A.045***(4)***[~~(5)~~]

STATUTORY AUTHORITY: KRS 45A.045

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.045 authorizes the Finance and Administration Cabinet to promulgate administrative regulations as necessary to serve as the central procurement and contracting agency for the Commonwealth. KRS 45A.045***(4)***[~~(5)~~] authorizes the cabinet to promulgate an administrative regulation for the sale, transfer, or disposal of state property. This administrative regulation provides for taking of inventories of real property and buildings and the filing of inventories with the Division of Real Properties, Finance and Administration Cabinet.[~~These amendments make several revisions to clarify the inventory reporting requirements of state-owned land and buildings by state agencies.~~]

Section 1. The Division of Real Properties of the Finance and Administration Cabinet shall be responsible for maintenance of inventory records for all state-owned land and buildings.

Section 2. The inventory shall be supplied to the Division of Real Properties by each agency. The report will be as of June 30th and received by the Division of Real Properties no later than September 30th. All inventory records shall be kept current.

Section 3. Forms for reporting the inventory of both land and buildings shall be supplied by the Division of Real Properties. (1) Land: each installation shall require a separate inventory report Form B 117-6/FTR-10[~~B 117-6~~]. For purposes of inventory reporting, an installation shall be state-owned land that completely encloses a definable area of land that is administered by a single state agency. If a tract of land is completely separated by privately owned land, then each tract of land shall be reported by the agency as a separate installation. Contiguous tracts of state-owned land administered by different state agencies shall be reported by these agencies as separate installations.

(2) Buildings.

(a) Each individual building valued at more than $5,000 shall be reported on a separate inventory report Form B 117-6/FTR-10[~~B 117-6~~].

(b) If acquisition costs are not known for the land or buildings, the current appraisal price as established by the Department of Insurance shall be used for the cost.

Section 4. Periodic inspections may[~~shall~~] be made by the Division of Real Properties to determine accuracy of reports. When changes in the state agency's inventory become necessary because of sales, purchases, demolitions, and modifications to the state-owned buildings, the state agency shall adjust their inventory records accordingly and shall provide a copy of the adjusted inventory record to the Division of Real Properties on Form B 117-6/FTR-10[~~B 117-6~~].

WILLIAM M. LANDRUM III, Secretary

APPROVED BY AGENCY: July 17, 2019

FILED WITH LRC: July 23, 2019 at 1 p.m.

CONTACT PERSON: Scott Aubrey, Division Director, Finance and Administration Cabinet, Department of Facilities and Support Services, 403 Wapping Street, Frankfort, Kentucky 40601. fax (502) 564-8108, phone (502) 564-2014, email Scott.Aubrey@ky.gov.

**BOARDS AND COMMISSIONS**
**Kentucky State Board of Accountancy**
**(As Amended at ARRS, November 12, 2019)**

**201 KAR 1:100. Continuing professional education requirements.**

RELATES TO: KRS 325.330

STATUTORY AUTHORITY: KRS 325.240(2), 325.330(4)(a), (7)(b)1.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.240(2) authorizes the Kentucky State Board of Accountancy to promulgate administrative regulations for the administration of KRS Chapter 325. KRS 325.330(4) and (7)(b)1. require the board to promulgate administrative regulations to establish the continuing professional education requirements for certified public accountants. This administrative regulation establishes the continuing professional education requirements a certified public accountant shall satisfy to renew a license.

Section 1. Definitions. (1) "Continuing professional education hour" or "CPE hour" means a fifty (50) minute period excluding meals, breaks**,** and business sessions.

(2) "Technical standards courses" means continuing education courses ***if***[~~***where***~~] the subject matter area of the courses are accounting, auditing, business law, economics, finance, information technology, management services, professional ethics, statistics, securities, tax, and specialized areas of industry**,** all of which shall contribute directly to the professional competence of a licensee.

(3) "Worked" means hours devoted by a licensee that are documented as billable and non-billable hours to a public accounting firm or client.

Section 2. Requirements for Continuing Professional Education Credit. (1) Each licensee who worked 3,000 hours or more in a public accounting firm licensed with the board during the two (2) calendar years prior to the renewal date of his or her license shall complete eighty (80) CPE hours. The eighty (80) hours shall be completed during the preceding two (2) calendar years. All other licensees shall complete sixty (60) CPE hours.

(a) Beginning January 1, 2021, fifty (50) ***percent***[~~***per cent***~~] of the eighty (80) hours and sixty (60) hours shall include technical standards courses.

(b) Beginning January 1, 2021, licensees who prepare audits, reviews, compilations, or the preparation of financial statements shall complete eight (8) hours of CPE in the subject matter area of auditing or accounting each calendar year for a total of sixteen (16)

hours per reporting period.

(c) Beginning January 1, 2021, licensees required to obtain eighty (80) hours of CPE may include eight (8) hours of personal development courses toward the required hours, and licensees required to obtain sixty (60) hours of CPE may include up to twelve (12) hours of personal development courses in the required hours. ***An acceptable personal development course shall be limited to a course intended to improve the time management, leadership, team building, goal setting, and similar soft skills related to working in an office or professional setting[~~These hours shall be professionally enhancing to their career to be acceptable~~].***

(2) Each licensee shall complete two (2) CPE hours in professional ethics. These two (2) hours shall be included as part of the eighty (80) or sixty (60) CPE hours a licensee is required to complete to renew his or her license.

(3)(a) A certified public accountant who, for the two (2) calendar years prior to renewal of his or her license, did not operate or work in an office in this state shall satisfy the requirements of this section by complying with the continuing professional education requirements for renewal of his or her license:

1. In the state in which the licensee's principal office is located; or

2. In the state in which the office is located where the licensee worked a majority of the time.

(b) If the state designated by paragraph (a) of this subsection does not have continuing professional education requirements for renewal of a license, the licensee shall comply with all continuing professional education requirements for renewal of a license in this state.

Section 3. Each licensee who held a license for less than a full two (2) calendar year period shall obtain two (2) CPE hours for each full month a license was held not to exceed the total number of required hours for the reporting period. The two (2) hours in professional ethics shall not be required to be part of the CPE hours completed in this time period.

Section 4. Waivers from Continuing Professional Education. (1) A reduction or waiver may be granted by the board if the licensee:

(a) Establishes that he or she is temporarily physically or psychologically unable to complete the continuing professional education requirements. The licensee shall submit an Initial Request for Waiver of CPE Requirements form with each request and a written statement:

1. From a licensed physician or other appropriate licensed health care provider that substantiates the physical or psychological claim of the licensee; and

2. That describes the licensee's working status during the time the licensee was unable to complete the continuing education, the licensee's current working status, and if the licensee plans to return to work;

(b) Has encountered a temporary extreme hardship, which was so severe that it was extremely difficult or impossible to meet the continuing professional education requirements. The licensee shall submit an Initial Request for Waiver of CPE Requirements form and a written statement with each request:

1. That describes in detail the facts associated with the extreme hardship; and

2. Documentation to substantiate the extreme hardship; or

(c) Is completely retired from practice and is fifty-five (55) years of age or older. To be considered completely retired, the licensee shall not perform accounting services in the practice of public accounting (which includes the preparation of tax returns), education, government or industry except for management of personal assets or investments.

(2) The board shall advise a licensee in writing whether the request is approved or denied.

(3) A licensee granted a waiver shall reaffirm the basis of the waiver when the license is next renewed by completing the:

(a) License Renewal - CPE Waiver Due to Medical or Extreme Personal Hardship form; or

(b) License Renewal - CPE Retirement Waiver form.

(4) A licensee completing the License Renewal - CPE Waiver Due to Medical or Extreme Personal Hardship form shall submit with the form updated medical documentation to support that the basis of the waiver continues to limit the licensee's ability to meet the CPE requirements.

(5) If the circumstances which form the basis of the waiver change, the licensee shall notify the board within thirty (30) days from the date of the change and resume compliance with the continuing professional education requirements from the date of the change.

(6) If the waiver request is granted, the licensee shall pay the license renewal fee listed in 201 KAR 1:065 on or before August 1.

Section 5. Courses that Qualify. (1) The overriding consideration in determining whether a specific course qualifies as acceptable continuing professional education shall be whether it is a formal program of learning which contributes directly to the professional competence of an individual licensed to practice as a certified public accountant in this state.

(2) Continuing professional education courses may qualify only if:

(a) An outline of the course is prepared in advance and preserved;

(b) The course is at least one (1) CPE hour in length. Credit shall be awarded for a course less than fifty (50) minutes in length if it is part of a continuing professional education program where at least one (1) fifty (50) minute course is also being offered;

(c) The course is conducted by a qualified instructor. A qualified instructor or discussion leader shall be anyone whose background training, education or experience makes it appropriate for him or her to lead a discussion on the subject matter of the particular course;

(d) A record of registration or attendance is maintained;

(e) A course completion document is given to each attendee; and

(f) The course topic is an acceptable field of study.

(3) Acceptable fields of study.

(a) The following fields of study shall be considered acceptable if the courses satisfy all of the criteria established in subsections (1), (2), and (5) of this section:

1. Any of the courses defined in Section 1(2) of this administrative regulation[~~Accounting and finance~~];

2.[~~Auditing;~~

~~3. Taxation;~~

~~4. Business management services;~~

~~5. Information technology;~~

~~6.~~] Business communications; and[~~7. Statistics;~~

~~8. Ethics;~~

~~9. Economics;~~

~~10. Business law;~~

~~11. Securities;~~]

3.[~~12.~~] Marketing.[~~; and~~

~~13. Specialized areas of industry that contribute directly to the professional competence of a licensee.~~]

(b) The responsibility for substantiating that a particular course is acceptable and meets the requirements of this administrative regulation shall be the obligation of the licensee.

(4) Acceptable programs. The following programs qualify for credit if they meet the standards specified in subsections (1), (2), (3), and (6) of this section:

(a) Professional education and development programs of national, state, and local accounting organizations;

(b) University or college courses.

1. Credit and not for credit courses completed at or through a university or college that is accredited by one (1) of the (6) six regional accrediting associations listed in 201 KAR 1:190, Section ***5[4]***;

2. Documentation to verify completion of a course shall be issued by the appropriate representative of the university or college.

3. Each unit of credit for a university or college course shall be equal to the following CPE hours:

a. One (1) semester hour equals fifteen (15) CPE hours; and

b. One (1) quarter hour equals ten (10) CPE hours; and

(c) Formal in-firm education programs. Portions of a program devoted to firm administrative, financial, and operating matters shall not qualify.

(5) Formal individual study courses, Web casts, and online learning courses.

(a) The amount of credit allowed for any individual study course shall be recommended by the course sponsor.

(b) A licensee claiming credit for an individual study course shall obtain evidence of satisfactory completion of the course from the course sponsor.

(c) Credit shall be assigned to the reporting period in which the provider indicates the course was completed.

(6) Service as lecturer, discussion leader, or speaker.

(a) Instructors, discussion leaders, and speakers may claim continuing professional education credit for both preparation and presentation time.

(b) Credit may be claimed for actual preparation time up to two (2) times the class contact hours.

(c) Credit as an instructor, discussion leader, or speaker may be claimed if the presentation is one which would meet the requirements of this section.

(d) Credit shall not be granted for repetitious presentations of courses unless it can be demonstrated that the course content was substantially changed and the change required significant additional study or research.

(e) Maximum credit for preparation and teaching shall not exceed sixty (60) percent of the renewal period requirement.

(7) Published articles and books.

(a) A licensee may be awarded credit for articles or books the licensee writes if:

1. The subject matter of the article or book contributes directly to the professional competence of the licensee; and

2. Prior to publication, the licensee submits a final draft of the article or book to the board to review and determine the amount of credit to be awarded.

(b) Credit for preparation of the article or book shall not exceed twenty-five (25) percent of the total CPE hours required.

(c) The board shall make the final determination of the amount of credit to be granted.

(8) Certifications and licenses. Licensees who receive a certification or license from a nationally organized business organization or a federal governmental entity following successful completion of an exam in one (1) of the fields of study listed in subsection (3) of this section shall receive credit only for the length of time assigned by the organization or governmental entity to complete the examination.

Section 6. Programs that deal with the following subject areas shall not be considered acceptable continuing education:

(1)[~~Personal growth or development;~~]

~~(2)~~] Self-realization;

(2)[~~(3)~~] Spirituality;

(3)[~~(4)~~] Personal health or fitness;

(4)[~~(5)~~] Sports and recreation;

(5)[~~(6)~~] Foreign languages or cultures; and

(6)[~~(7)~~] Any other subjects that do not contribute directly to the professional competence of the licensee.

Section 7. Reporting and Controls. (1) Each licensee shall obtain the appropriate documentation to establish that he or she completed the continuing professional education requirements.

(2) This documentation shall be retained by each licensee for a period of five (5) years.

(3) The board shall conduct annually a random audit to verify a certain percentage of licensees completed the amount of continuing professional education hours required to renew his or her license. A licensee who misrepresented that he or she completed the sixty (60) or eighty (80) CPE hours at the time the licensee renewed his or her license shall not be eligible for a retirement, medical, or extreme personal hardship waiver after being selected to participate in an audit.

(4) Course completion evidence shall consist of a document prepared by the course sponsor indicating the licensee completed a formal program of learning. A document shall include the:

(a) Names of the licensee and program sponsor;

(b) Title and field of study;

(c) Dates attended; and

(d) Number of CPE hours awarded.

(5) A licensee who completed continuing professional education courses that complied with the requirements of this administrative regulation and were presented by or on behalf of his or her employer may submit to the board a list of the courses completed if the list contains the:

(a) Information described in subsection (4) of this section; and

(b) Signature of the person at the licensee's place of employment who verifies the accuracy of the information for a third party.

Section 8. Continuing Professional Education Sponsors. (1) Sponsors shall not be required to be preapproved by the board.

***(2)[(a)]***[~~(2)~~] Detailed records of each program shall be kept by the sponsor and shall include:

***(a)[(b)]***[~~(a)~~] The date of the program presentation;

***(b)[(c)]***[~~(b)~~] The name of each instructor or discussion leader;

***(c)[(d)]***[~~(c)~~] A listing of licensees attending each program presentation; and

***(d)[(e)]***[~~(d)~~] A written agenda of the program presentation.

(3) Records shall be kept by the sponsor for a period of five (5) years following the date each program is presented.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Initial Request for Waiver of CPE Requirements", September 2016;

(b) "License Renewal-CPE Waiver Due to Medical or Extreme Personal Hardship", September 2016; and

(c) "License Renewal-CPE Retirement Waiver", September 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT PATTERSON, CPA President

APPROVED BY AGENCY: August 12, 2019

FILED WITH LRC: August 14, 2019 at 11 a.m.

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**BOARDS AND COMMISSIONS**
**Kentucky State Board of Accountancy**
**(As Amended at ARRS, November 12, 2019)**

**201 KAR 1:190. Examination sections, applications, and procedures.**

RELATES TO: KRS 325.270, 325.261(4)

STATUTORY AUTHORITY: KRS 325.240(2), 325.270(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.240(2) authorizes the board to promulgate administrative regulations to administer KRS Chapter 325. KRS 325.270(1) and (2) require the board to authorize examinations for individuals seeking to become certified public accountants, and permit the board to, by administrative regulation, adopt standards and fees governing all examination policies and procedures. KRS 325.261(4) requires passage of an examination prior to a person becoming licensed as a certified public accountant and for the board to determine the subjects to be included on the examination. This administrative regulation establishes the subjects, also referred to as sections, to be included on the examination, the procedures, and fees associated with the administration of the examination.

Section 1. Definitions.

(1) "Accounting course" means the subject matter contained in

the course description or catalog issued by a college or university includes auditing, tax, accounting standards, principles, or processes.

(2) "AICPA" means the American Institute of Certified Public Accountants, the entity that prepares and grades the Uniform CPA Examination.

(3) "Business-related subjects" means courses that contain in the course prefix or title an indication that the course subject matter is one (1) of the following: business, finance, marketing, management, economics, computers, statistics, or accounting.

(4) "CLEP credit" means credit granted by a university or college to a prospective student who obtains a passing score on an exam administered through the College Level Examination Program.

(5) "DSST credit" means credit granted by a university or college to a prospective student who obtains a passing score on an exam administered through the Dantes Subject Standardized Testing program.

(6) "Life assessment course" means a course where a student earns credit at a university or college based upon the student's personal life and work experiences.

(7) "Major or concentration in accounting" means a minimum of thirty-nine (39) semester hours in business-related subjects of which twenty-seven (27) semester hours shall consist of accounting courses.

(8) "NASBA" means the National Association of State Boards of Accountancy, which operates a nationwide computer data bank for candidates applying to sit for the Uniform CPA Examination.

(9) "Official transcript" means an official document issued by a college or university that specifies the college course work completed, degrees awarded, the date the degree was awarded, and contains an authorizing signature or seal.

(10) "Prometric or its successor" means the testing service in charge of administering the Uniform CPA Examination.

(11) "Quarter hour" means 66/100ths of a semester hour.

(12) "Testing window" means the two (2) months out of each three (3) month period during a calendar year when an exam candidate may sit for the Uniform CPA Examination.

(13) "Uniform CPA Examination" means the computer-based version of the licensure examination administered by the AICPA.

Section 2. Examination Sections. The board has adopted the Uniform CPA Examination prepared by the AICPA as the examination every candidate seeking to receive a license shall sit for and obtain a passing grade. The sections included on this examination shall be:

(1) Auditing and Attestation;

(2) Financial Accounting and Reporting;

(3) Regulation; and

(4) Business Environment and Concepts.

Section 3. Grading Procedures and Acquiring Credit for Obtaining a Passing Score.

(1) An exam candidate shall receive a passing score on all sections of the examination to be eligible to receive a license.

(2) The passing score shall be seventy-five (75) on each section. An exam candidate may retain a passing score on any section even though the candidate may have sat for and failed other sections of the examination at the same sitting.

(3) Subject to the exception contained in subsection (4) of this section, an exam candidate may sit for one (1) or any number of the four (4) sections of the examination at a time during a testing window.

(4) An exam candidate shall not sit more than once for the same section of the examination during a testing window. Beginning July 1, 2020 an exam candidate shall not sit for the same section of the examination until after they receive a score for that section.

(5) When an exam candidate initially receives a passing score on a section of the Uniform CPA Examination, the candidate shall have eighteen (18) months following the last day of the month of the administration of that examination section to obtain a passing score on the remaining sections of the examination.

(a) Failure to receive a passing score on the remaining sections of the examination within the eighteen (18) months shall result in the expiration of the initial passing score**,** but not other sections passed during that eighteen (18) month period.

(b) All sections of the examination shall be passed during an eighteen (18) month time period for the candidate to be considered to have passed the examination.

(6) One (1) request to extend the time to retain passing scores beyond the time restrictions contained in this section shall be granted to a candidate who has sat for one (1) section of the exam during the same testing window when the passing score was to expire. The time extension shall expire on the last day of the testing window that immediately follows the month in which the score was scheduled to expire. Beginning July 1, 2020, an extension shall expire the last day of the calendar quarter from the date the candidate sat for the exam section.

Section 4. Beginning July 1, 2020, testing windows as defined in Section 1(12) ***of this administrative regulation*** shall cease to exist.

Section 5. Initial Examination Applicants.

(1) Initial examination application process.

(a) An initial examination applicant shall submit a complete, notarized Application for the Uniform CPA Examination.

(b) The applicant shall:

1. Indicate whether the applicant has been convicted, plead guilty, entered an Alford plea, or a plea of no contest to a felony or misdemeanor, other than a minor traffic violation, and if so, submit with the application:

a. A copy of the judgment or sentence of conviction;

b. A criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the date of the application, or a similar document from the out of state agency where the conviction was entered; and

c. A letter of explanation;

2. Indicate whether the applicant has been denied admission to the Uniform CPA Examination, and if so, attach to the application a letter explaining the reason, date, and jurisdiction of the denial;

3. Indicate whether the applicant has had disciplinary action taken against any professional license, and if so, attach to the application:

a. A letter indicating the jurisdiction and date of action;

b. A copy of all records associated with the action; and

c. An explanation of the circumstances; and

4. Submit an official transcript from each college or university that evidences completion of the educational requirements established in KRS 325.261, which includes a major or concentration in accounting. Course credit hours that are based upon a quarter hour system shall be converted to semester hours.

(c) An applicant requesting reasonable accommodations in testing due to a disability shall complete an Exam Applicant Special Accommodations Request Form supported by documentation no more than three (3) years old from a qualified examiner that shall include:

1. A diagnosis of the disability; and

2. Recommendation for the specific accommodations.

(d) The board shall not be responsible for the costs associated with obtaining the required documentation, but shall be responsible for the costs of reasonable accommodations that are provided to the applicant.

(e) The applicant shall submit a fee with the Application for the Uniform CPA Examination in the amount of:

1. Thirty (30) dollars for the application; and

2. Thirty (30) dollars for each section of the examination the applicant intends to take.

(f) Fees shall be nonrefundable and payment shall be in the form of a check or money order made payable to the Kentucky State Board of Accountancy. If the institution the check or money order is drawn on does not honor the check or money order, the application shall be incomplete and returned.

(2) Educational requirements.

(a) Educational requirements shall be[~~have been~~] completed at:

1. A college or university within the United States that was accredited by one (1) of the following accrediting associations when the degree was granted:

a. Middle States Association of Colleges and Schools;

b. North Central Association of Colleges and Schools;

c. New England Association of Schools and Colleges;

d. Northwest Association of Schools, Colleges and Universities;

e. Southern Association of Colleges and Schools; [~~or~~]

f. Western Association of Schools and Colleges; or

2. The board shall accept course credit hours awarded by a college or university after January 1, 2020 that is not accredited by one (1) of the associations listed in ***paragraph (a) 1. of this subsection[~~Section 4(2)(a) of this administrative regulation~~]***, if those course credit hours receive credit from a college or university accredited by one (1) of the associations specified in ***paragraph (a) 1. of this subsection[~~Section 4(2)(a) of this administrative regulation~~]*** following the enrollment of the student in the accredited college or university. This exception does not apply to the course credits listed in ***subsection (3) of this Section[~~Section 4 Subsection 3(a) and (b) (c) of this administrative regulation~~]***; or

3. A postsecondary educational institution outside the United States with course credits certified by a credentialing agency that is a member of the National Association of Credential Evaluation Services, Inc., or NASBA.

(b) The certification required by paragraph (a)3.[~~2.~~] of this subsection shall indicate:

1. That the foreign degree is equivalent to a baccalaureate or master's degree earned in an accredited United States college or university as described in KRS 325.261 and this administrative regulation;

2. That the applicant had a major or concentration in accounting;

3. The title of all courses completed by the applicant outside of the United States; and

4. The amount of credit awarded to the applicant for each course.

(c) The board may consult with a Kentucky state-funded four (4) year institution of higher education for assistance in evaluating the hours earned and the accreditation of an educational institution under this subsection.

(3)(a) Effective January 1, 2015, an applicant shall not receive credit toward satisfying the education requirements in KRS 325.261 and this administrative regulation for any credit hours awarded through a life assessment course or for DSST credit.

(b) Effective January 1, 2015, an applicant who received CLEP credit, or credit hours from a college or university for completing an internship or co-op program may use a maximum of six (6) of those hours from each program for a total of twelve (12) hours solely toward satisfying the 150 hour requirement in KRS 325.261(5).

Section ***6.[~~5.~~]***

(1)(a) The executive director of the board shall review all applications.

(b) If the executive director determines the application satisfies the requirements of this administrative regulation, the application shall be approved.

(c) If the executive director refuses to approve the application, it shall be submitted to the board for its review and consideration at its next regularly scheduled meeting.

(2) Applications approved by the executive director or the board shall be entered into the data bank operated by NASBA. NASBA shall then issue a payment coupon to the applicant that specifies the fees to be paid to NASBA, the AICPA, and Prometric to sit for the exam.

(3) Following payment of the required fees, NASBA shall issue a notice to schedule to the candidate which states the candidate is eligible to contact Prometric or its successor to schedule a date and time to sit for the examination.

(4)(a) A candidate shall have six (6) months from the date of issuance by NASBA of a notice to schedule to sit for the sections of the examination approved by the executive director or the board.

(b) The notice to schedule shall expire when the candidate has sat for the sections approved by the executive director or the board***,*** or at the conclusion of the six (6) month period whichever comes first.

(c) A notice to schedule that is not expired may be extended if a candidate describes in writing that the extension is necessary due to an emergency or a serious illness that will prohibit the candidate from sitting for a section of the exam prior to the conclusion of the six (6) month time period.

(d) To obtain approval to sit for additional sections of the examination, a candidate shall submit a reexam application as described in Section ***10[~~9~~]*** of this administrative regulation.

(5)(a) The exam candidate shall pay all costs associated with sitting for the Uniform CPA Examination charged by NASBA, Prometric or its successor, and the AICPA.

(b) The costs shall be paid no later than ninety (90) days following the date of issuance of the payment coupon from NASBA.

(c) Failure to pay these fees prior to the end of the ninety (90) day time period shall result in the cancellation of the payment coupon and require the candidate to submit a reexam application accompanied by the appropriate fees.

Section ***7.[~~6.~~]*** Examination Rules of Conduct.

(1) An examination candidate shall present two (2) forms of current and valid identification at the Prometric or its successor examination center. One (1) of these forms of identification shall be a state driver's license, a picture identification card issued by a state motor vehicle licensing agency, or a passport.

(2) The license or picture identification card shall be currently in effect and shall contain a photograph and signature.

(3) Failure to bring this identification to the examination center shall result in the candidate being prohibited from sitting for the examination.

(4) An examination candidate shall comply with all directives of the staff at the Prometric or its successor testing center and the rules of conduct in effect at the testing center.

(5) An examination candidate shall not:

(a) Use written materials or mechanical aids inside or outside the examination room during the course of the examination;

(b) Communicate with any person, other than the testing center staff, inside or outside the examination room, during the course of the examination;

(c) Copy answers or allows his or her answers to be copied;

(d) Substitute an individual in his or her place;

(e) Disclose in any manner any information concerning the examination questions or content;

(f) Falsify or misrepresent educational credentials or other information required for admission to the examination; or

(g) Fail to follow written or announced examination administration procedures.

Section ***8.[~~7.~~]*** Examination Misconduct Penalties. An examination candidate who violates any of the provisions of this administrative regulation may be prohibited from:

(1) Further participation in that particular examination section;

(2) Receiving grades after sitting for any examination; or

(3) Sitting for subsequent examinations.

Section ***9.[~~8.~~]*** An exam applicant shall immediately notify the board of a change in his or her mailing address.

Section ***10.[~~9.~~]*** Reexam Applicants.

(1) Upon request the board shall mail a Reexam Application for the Uniform CPA Exam to every candidate who fails to pass the Uniform CPA Examination.

(2) The reexam application shall be mailed to the most recent address provided by the candidate.

(3) The board shall not be responsible if the reexam application is not delivered by the United States Postal Service.

(4)(a) The applicant shall:

1. Indicate since the approval of the applicant's initial application whether the applicant has been convicted, plead guilty, entered an Alford plea, or a plea of no contest to a felony or misdemeanor, other than a minor traffic violation, and if so, submit

with the reexam application:

a. A copy of the judgment or sentence of conviction;

b. A criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application, or a similar document from the out of state agency where the conviction was entered; and

c. A letter of explanation; and

2. If not previously submitted, and if the applicant is requesting reasonable accommodations in testing due to a disability, complete an Exam Applicant Special Accommodations Request Form supported by documentation no more than three (3) years old from a qualified examiner that shall include:

a. A diagnosis of the disability; and

b. Recommendation for the specific accommodations.

(b) The reexam application shall be received in the board's office prior to the reexam candidate being considered eligible to sit for any section of the exam.

(5)(a) The candidate shall return the completed reexam application with the reexam fee.

(b) The reexam fee shall be thirty (30) dollars per section. The reexam fee shall be nonrefundable and paid by check or money order made payable to the Kentucky State Board of Accountancy. If the institution the check or money order is drawn on does not honor the check or money order, the application shall be incomplete and returned.

(6) A reexam candidate who fails to comply with the requirements of this section shall not be permitted to sit for reexam.

(7) The procedures and policies in Section ***6[5]*** of this administrative regulation shall be applicable to a reexam application.

(8) The reexam candidate shall comply with the requirements of Sections ***7, 8, and 9[6, 7, and 8]*** of this administrative regulation.

Section ***11.[10.]*** Examination grades received from NASBA shall be:

(1) Posted on the board's Web site; and

(2) A copy mailed to each affected candidate.

Section ***12.[11.]*** Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for the Uniform CPA Examination", October 2014;

(b) "Reexam Application for the Uniform CPA Examination", 2014; and

(c) "Exam Applicant Special Accommodations Request Form", October 2014.

***(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m.***[(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m.]

ROBERT PATTERSON, CPA, President

APPROVED BY AGENCY: August 12, 2019

FILED WITH LRC: August 14, 2019 at 11 a.m.

CONTACT PERSON: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281, email dick.carroll@ky.gov.

**PUBLIC PROTECTION CABINET**
**Kentucky Real Estate Authority**
**Kentucky Real Estate Commission**
**(As Amended at ARRS, November 12, 2019)**

**201 KAR 11:002. Repeal of 201 KAR 11:030, 201 KAR 11:045, 201 KAR 11:062, 201 KAR 11:090, 201 KAR 11:095, 201 KAR 11:100, 201 KAR 11:110, 201 KAR 11:115, 201 KAR 11:135, 201 KAR 11:145, 201 KAR 11:147, 201 KAR 11:175, 201 KAR 11:180, 201 KAR 11:195, 201 KAR 11:215, 201 KAR 11:225, 201 KAR 11:230, 201 KAR 11:232, 201 KAR 11:235, 201 KAR 11:240, 201 KAR 11:245, 201 KAR 11:250, 201 KAR 11:300, 201 KAR 11:350, 201 KAR 11:400, 201 KAR 11:410, 201 KAR 11:430, 201 KAR 11:440, 201 KAR 11:450, and 201 KAR 11:460.**

RELATES TO: KRS 324.282

STATUTORY AUTHORITY: KRS ***324.281(5),*** 324.282***[, 324.281(5)]***

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and KRS 324.282 ***require[authorize]*** the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. This administrative regulation repeals 201 KAR 11:030, 201 KAR 11:147, 201 KAR 11:215, 201 KAR 11:225, 201 KAR 11:230 and 201 KAR 11:430***,*** because the necessary substantive provisions of those administrative regulations have been incorporated into ***201 KAR 11:210,[another administrative regulation]*** concerning the licensing for improved efficiency and ease of use. This administrative regulation repeals 201 KAR 11:175, 201 KAR 11:232, 201 KAR 11:235, 201 KAR 11:240, and 201 KAR 11:460***,*** because the necessary substantive provisions of those administrative regulations have been incorporated into ***201 KAR 11:170,[another administrative regulation]*** concerning education providers for improved efficiency and ease of use. This administrative regulation repeals 201 KAR 11:450***,*** because the necessary substantive provisions of that administrative regulation has been divided between ***201 KAR 11:170 and 201 KAR 11:210[two other previously mentioned administrative regulation amendments]*** concerning licensing and education providers. This administrative regulation repeals 201 KAR 11:045, ***201 KAR 11:062,*** 201 KAR 11:090, 201 KAR 11:095, 201 KAR 11:100,***[201 KAR 11:062,]*** 201 KAR 11:110, 201 KAR 11:115, ***201 KAR 11:145,[201 KAR 11:410,]*** 201 KAR 11:250, 201 KAR 11:300, 201 KAR 11:350, 201 KAR 11:400, and ***201 KAR 11:410, [201 KAR 11:145]*** because the necessary substantive provisions of those administrative regulations have been incorporated into ***201 KAR 11:121,[a singular administrative regulation]*** concerning the licensee standards of conduct for improved efficiency and ease of use. This administrative regulation repeals ***201 KAR 11:135 and*** 201 KAR 11:195***,[and 201 KAR 11:135]*** because the necessary substantive provisions of those administrative regulations have been incorporated into ***201 KAR 11:190,[another administrative regulation]*** concerning licensee complaints and discipline for improved efficiency and ease of use. This administrative regulation repeals 201 KAR 11:180, 201 KAR 11:245, 201 KAR 11:440, as the provisions in these administrative regulations were either duplicative or contrary to statute or imposed more restrictive burdens than KRS Chapter 324.

Section 1. The following administrative regulations are hereby repealed:

(1) 201 KAR 11:030, License cancellation; reasons for;

(2) 201 KAR 11:045, Written offers to be submitted to owner-client, agreements to provide brokerage services, licensee duties;

(3) 201 KAR 11:062, Retention of brokers' records;

(4) 201 KAR 11:090, Instruments prepared by broker; disposition;

(5) 201 KAR 11:095, Closing statements;

(6) 201 KAR 11:100, Exclusive listing contract; continuation;

(7) 201 KAR 11:110, Exclusive authority retained by original broker;

(8) 201 KAR 11:115, Auction obligations;

(9) 201 KAR 11:135, Standards for filing a sworn statement;

(10) 201 KAR 11:145, Salesman's duties when terminating affiliation with broker;

(11) 201 KAR 11:147, Procedure for license retention when sales associate released by broker;

(12) 201 KAR 11:175, Instructor approval procedures and guidelines;

(13) 201 KAR 11:180, Promotion of out-of-state property and time-shares, registration and prerequisites.

(14) 201 KAR 11:195, Informal Settlement Procedures;

(15) 201 KAR 11:215, License recognition; application requirements;

(16) 201 KAR 11:225, License renewal - annual requirements and change request procedures;

(17) 201 KAR 11:230, Continuing education requirements.

(18) 201 KAR 11:232, Continuing education provider requirements;

(19) 201 KAR 11:235, Post-license education requirements;

(20) 201 KAR 11:240, Distance education requirements;

(21) 201 KAR 11:245, Property management procedures and guidelines.

(22) 201 KAR 11:250, Listing and purchase contracts and other agreements entered into by licensees; provisions required; Seller-Initiated Relisting Request Disclosure Form;

(23) 201 KAR 11:300, Use of facsimile and electronic mail transmissions; electronic storage;

(24) 201 KAR 11:350, Seller's Disclosure of Property Conditions Form;

(25) 201 KAR 11:400, Agency disclosure requirements;

(26) 201 KAR 11:410, Broker duties pursuant to designated agency;

(27) 201 KAR 11:430, Procedure for criminal records background check - disciplinary action against licensees for acts committed before or during the application process;

(28) 201 KAR 11:440, Personal assistant duties.

(29) 201 KAR 11:450, Broker management course; and

(30) 201 KAR 11:460, Minimum rating requirements for instructors.

LOIS ANN DISPONETT, Chair
H.E. CORDER II, Executive Director
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: July 15, 2019

FILED WITH LRC: July 15, 2019 at 9 a.m.

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**PUBLIC PROTECTION CABINET**
**Kentucky Real Estate Authority**
**Kentucky Real Estate Commission**
**(As Amended at ARRS, November 12, 2019)**

**201 KAR 11:011. Definitions for 201 KAR Chapter 11.**

RELATES TO: KRS 324.010(1), 324.046(1), 324.111(1), (2), (3), (4), (6), 324.117(1), (5), 324.160(4)(j), (m), (r), 324.410(1), 324.420(1), (2), (3), (4), (5)

STATUTORY AUTHORITY: KRS 324.117(5), 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: ***KRS 324.117(5) requires the commission to promulgate an administrative regulation to define false, misleading, or deceptive advertising.*** KRS 324.281(5) and KRS 324.282 require[~~requires~~] the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to implement KRS Chapter 324. This administrative regulation defines terms used in the implementation of KRS Chapter 324.

Section 1. Definitions.

(1) "Academic credit hour" means:

(a) One (1) college semester hour; or

(b) Sixteen (16)***[,]*** fifty (50) minute hours of actual classroom attendance.

(2) "Advertising" or "advertisement" means any manner, method, or activity by which a licensee of the commission makes known a specific property for sale or lease or any services for which a real estate license is required. Advertising ***does[shall]*** not include:

(a) Private communications between a licensee and a client or prospective client; or

(b) Directional or pointer signs ***that only[whose sole purpose is to]*** provide directions to a listed property and ***include[includes]*** no identifying licensee or brokerage information.

(3) ***"Affiliated licensee" means a sales associate or a broker who is affiliated with a principal broker.***

***(4)*** "Agency" means the specific consensual relationship between the principal broker and the client for a contemplated transaction, by oral or written agreement.

***(5)[(4)]*** "Agency consent agreement" means the form prescribed by the commission and used by a principal broker and a client to establish the agency relationship in writing.

***(6)[(5)]*** "Branch office" means a physical place of business for a real estate brokerage company in addition to the main office location **that the commission may enter to inspect required documents or allegations of violations of KRS Chapter 324**.

***(7)[(6)]*** "Broker-affiliated training program" means one (1) or more post-license education ***courses[course]*** offered for post-license educational credit provided or sponsored by a principal broker.

***(8)[(7)]*** "Business relationship" means any arrangement, other than the current real estate transaction, ***if[whereby]*** a licensee and a party have or had a mutual, ongoing financial interest in any company, corporation, or other income-producing venture, including any prior representation by the licensee for the party's purchase**, lease,** or sale of real estate.

***(9)[(8)]*** "Client" means***:***

***(a)*** A person or persons, or entity or entities, for whom a licensee provides real estate brokerage services ***[and]***:

***1.[(a)]*** Who has entered into a written agreement with a principal broker for provision of real estate brokerage services;

***2.[(b)]*** With whom or for whom a licensee completes an offer to purchase or lease for real estate; or

***3.[(c)]*** For whom a licensee otherwise by oral agreement performs acts of real estate brokerage; ***and***

***(b)[(d)]*** For the purposes of selling or leasing real estate, the client ***is[shall be]*** the person or persons, or entity or entities, authorized to sell or lease the subject real estate.

***(10)[(9)]*** "Commercial transaction" means a transaction other than the sale of a single-family residential property, multifamily property containing four (4) units or less, or single-family residential lot.

***(11)[(10)]*** "Company" means an office or firm, headed by a principal broker, formed to offer real estate brokerage services, which is organized as:

(a) A registered business entity;

(b) Sole proprietorship; or

(c) Another business arrangement.

***(12)[(11)] "Condominium" means:***

***(a) The absolute ownership of a unit in a multi-unit building based on a legal description of the airspace the unit actually occupies; or***

***(b) A separate dwelling unit in a multi-unit development, plus an undivided interest in the ownership of the common elements in the building or development, which are owned jointly with the other condominium unit owners.***

***(13)*** "Confidential information" means***:***

***(a)*** Information received or sent, verbally or in writing including transaction paperwork and files, by a licensee, that ***may[could]*** materially compromise the negotiating position of a client or prospective client.

***(b)*** Confidential information ***includes[shall include]*** information that is not required to be disclosed by law***;*** and***[:]***

***1.[(a)]*** Is provided to a licensee by a client or prospective client to a real estate transaction;

***2.[(b)]*** Describes or affects the client or prospective client's bargaining position or motivation; or

***3.[(c)]*** Is designated in writing as confidential by the client or prospective client.

***(14)[(12) "Condominium" means means the absolute ownership of a unit in a multiunit building based on a legal description of the airspace the unit actually occupies, or a***

***separate dwelling unit in a multiunit development, plus an undivided interest in the ownership of the common elements in the building or development, which are owned jointly with the other condominium unit owners.***

***(12)]*** "Consumer" means a person or entity with whom a licensee exchanges information that is public in nature, but otherwise does not perform acts of real estate brokerage and with whom no written or oral agency agreement or fiduciary relationship exists.

***(15)[(13)]*** "Continuing education course" means a course approved pursuant to the requirements set forth in KRS 324.085(1) and ***201 KAR Chapter 11[the administrative regulations promulgated thereunder]***.

***(16)[(14)]*** "Contract deposit" means earnest money delivered to a licensee in conjunction with ***a*** real estate sales contract [licensed agent as part of an offer to enter a contract for the sale of real property] after:

(a) The offer or counteroffer is accepted; and

(b) An executory contract exists.

***(17)[(15)]*** "Delivery" means transmission of an item to a party by:

(a) Mail;

(b) Facsimile transmission;

(c) Electronic mail;**[or]**

(d) Hand**; or**

**(e) Other legal means**.

***(18)[(16)]*** "Designated agency" means a type of agency prescribed by KRS 324.121(2).

***(19)[(17)]*** "Designated agent" means one (1)***[,]*** or more ***licensees[, licensee(s)]*** designated by the principal broker in accordance with KRS 324.121(1) to provide real estate brokerage services to a client.

***(20)[(18)]*** "Distance education course" means a continuing or post-license education course or a pre-license course that:

(a) Is taught in a setting in which the teacher and the student are in separate locations; and

(b) Uses instructional methods that include internet-based training, computer-based training (CBT), satellite transmission, or teleconferencing.

***(21)[(19)]*** "Dual agency" means a type of agency in which:

(a) The principal broker and all affiliated licensees simultaneously represent, in the same transaction, buyer and seller, or lessor and lessee, as clients of the principal broker in a limited fiduciary capacity***;[,]*** or

(b) In companies that practice designated agency, only the principal broker or a designated manager ***is[shall be]*** a dual agent for that transaction pursuant to KRS 324.121(2).

***(22)[(20)]*** **"Duplex" means two (2) residential units sharing a single roof.**

***(23)[(22)]*** "Education cycle" means the time period commencing on January 1 of each year and ending at 11:59 p.m. on December 31 of each year.

***(24)[(23)][(21)]*** "Family relationship" means any known familial relationship between a licensee and party**[regardless of distance of the relationship]**.

***(25)[(24)] "Fourplex" means four (4) residential units sharing a single roof.***

***(26)[(22)]*** [(4)]["False, misleading, or deceptive advertising" means an advertisement that is prohibited pursuant to KRS 324.117(1) because the advertisement:

(a) Is contrary to fact;

(b) Leads a person to a mistaken belief or conclusion; or

(c) Knowingly made a representation that is contrary to fact.]

"Fraud" or "fraudulent dealing" means a material misrepresentation that:

(a) Is:

1. Known to be false; or

2. Made recklessly;

(b) Is made to induce an act;

(c) Induces an act in reliance on the misrepresentation; and

(d) Causes injury.

***(27)[(23) "Fourplex" means four (4) residential units sharing a single roof.]*** "Guaranteed sales plan" means an offer or solicitation to guarantee the:

(a) Sale of an owner's real estate; or

(b) Purchase of the owner's real estate if the owner's real estate is not sold by the licensee.

***(28)[(24)]*** "Initial sales associate license" means an original Kentucky sales associate license issued by the commission for the first time or a Kentucky sales associate license re-issued to a person who formerly held a license issued by the commission.

***(29)[(25)]["License recognition" means a licensing process that:***

***(a) Replaces reciprocal agreements; and***

***(b) May be used to obtain a Kentucky license by an individual who holds an active and unrestricted out-of-state sales associate's or broker's license, or the equivalent of either.***

***(29)]][(26)]*** "Licensee" means a person properly licensed as a broker or sales associate to perform acts of real estate brokerage in accordance with KRS Chapter 324 and ***201 KAR Chapter 11[the administrative regulations promulgated thereto]***.

***(30)[(27)]*** "Personal relationship" means a platonic or nonplatonic friendship between a licensee and a party.

***(31)[(28)]*** "Post-license education course" means a course approved by the commission that satisfies a portion of the forty-eight (48) hours of education required by KRS 324.085(2).

***(32)[(29)]*** "Pre-license course" means a course approved by the commission that satisfies an education requirement to obtain a real estate sales associate license.

***(33)[(30)]*** "Promotional activities" means every solicitation or attempt to bring about the sale, exchange, lease, assignment, license**,** or award with regard to a timeshare interest in real estate.

***(34)[(31)]*** "Prospective client" means a person or entity who has not entered into a written or oral agreement with a principal broker to provide real estate brokerage services, but to whom a licensee offers real estate brokerage services or from whom a licensee receives confidential information related to a contemplated real estate transaction.

***(35)[(32)]*** "Renewal cycle" means the time period commencing on April 1 of each year and ending on March 31 two (2) calendar years thereafter.

***(36)[(33)]*** "Security deposit" is defined by KRS 383.545(13).

***(37)[(34)]*** "Single agency" is the type of agency ***if[where]*** the principal broker and all affiliated licensees of the real estate brokerage company act as an agent for a buyer or seller, or a lessor or lessee, as the client on the same side of a transaction.

***(38)[(35)]*** "Single family residential real estate dwelling" means any:

(a) ***[A]*** **Stand-alone[Duplex, triplex, fourplex; condominium, townhouse, or]** residential unit;

(b) Manufactured home permanently attached to land; or

(c) Residential unit otherwise conveyed on a unit-by-unit basis, even if the unit is part of a larger**[building or]** parcel of real estate containing more than **two (2) detached[four (4)]** residential units.

***(39)[(36)]*** "Team" or "teams" is a group of ***licensees[more than one (1) licensee]*** working together who are:

(a) Affiliated with the same principal broker;

(b) Led by a team leader; and

(c) Representing themselves to the public utilizing the same authorized alternate or assumed name to brand, advertise**,** and broker real estate.

***(40)[(37)]*** "Team leader" means an individual who is designated by his or her principal broker to be the head of the team.

***(41)[(38)]*** "Timeshare" means an arrangement under which one may acquire, for a period of time, the right to use and occupy property, for a recurring block of time. A timeshare may be:

(a) A timeshare estate, ***if[wherein]*** a freehold estate or an estate for years is conveyed;

(b) A vacation lease, ***if[wherein]*** a buyer purchases the right to occupy a specific accommodation for a specified time period over a specified number of years;

(c) A vacation license or club membership, ***if[wherein]*** a buyer acquires the right to occupy an undesignated unit at certain real ***property or properties[property(ies)]*** during a specific time each year for a specific number of years; or

(d) Variations of ***paragraphs (a) through (c) of this***

***subsection[the above]*** that result in the acquisition of the right to use real property for a limited period of time in recurring intervals for a number of years.

***(42)[(39)]*** **"Townhouse" means a type of residential dwelling with two (2) floors that is connected to one (1) or more dwellings by a common wall or walls. Title to the unit and lot vest in the owner who shares a fractional interest with other owners in any common areas.**

***(43)*** "Transactional brokerage" means a form of brokerage ***service or services[service(s)]*** provided to either or both parties to a transaction ***if[wherein]*** the licensee owes to the parties only the duties owed to a consumer and ***if[wherein]*** confidential information is not relayed between the parties by the licensee, unless so directed by the sending party.

***(44)[(40)]*** **"Triplex" means three (3) residential units sharing a single roof.**

**(45)** "Unrestricted license" means a license that is not under any order of limitation or discipline by another jurisdiction's regulatory body.

***(46)[(41)]***[(5)] "Without delay" means as soon as reasonably possible based on the availability of the licensee and the client, and subject to any written agreement between them as to how and when written offers will be submitted.

***(47)[(42)]*** "Without unreasonable delay" means:

(a) For contract deposits or money belonging to others, within three (3) business days of the receipt by the principal broker or an affiliated licensee of the principal broker; or

(b) For notice required by KRS 324.360(8), within seventy-two (72) hours of the listing agent's receipt of the prospective purchaser's written and signed offer to purchase[within three (3) business days of the creation of an executory contract for the sale or lease of real property].

LOIS ANN DISPONETT, Chair
H.E. CORDER II, Executive Director
K. GAIL RUSSELL, Secretary

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**PUBLIC PROTECTION CABINET**
**Kentucky Real Estate Authority**
**Kentucky Real Estate Commission**
**(As Amended at ARRS, November 12, 2019)**

**201 KAR 11:105. Advertising[listed property; advertising public information about specific property; under what conditions consent and authorization of owner or principal broker is required].**

RELATES TO: KRS 324.117, 324.160(4)(d), [(4)(w)](6)

STATUTORY AUTHORITY: KRS 324.117, 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and KRS 324.282 require the Kentucky Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate ***administrative*** regulations[KRS 324.282 requires the Kentucky Real Estate Commission to promulgate administrative regulations] to carry out and enforce the provisions of KRS Chapter 324. KRS 324.117(5) requires the commission to promulgate administrative regulations to define false, misleading, or deceptive advertising. KRS 324.117(6) requires the commission to promulgate administrative regulations to define the manner in which licensees may utilize any internet electronic communications for advertising or marketing. This administrative regulation establishes certain standards for real estate advertising practices, including internet advertising[real estate].

Section 1. Consent Required to Advertise a Specific Property. (1)***(a)*** A licensee[real estate broker] shall not:

***1.[(a)]*** Advertise[offer] real estate for sale or lease without the written consent of the owner;[.]

***2.[(b)]*** Place signage or another advertisement on any private or listed property without the written consent of the owner; or

***3.[(c)1.]*** Promote or advertise a specific property listed by another principal broker unless the licensee has requested and obtained written consent from the listing principal broker.

***(b)[(2.)]*** Nothing in ***paragraph (a)1. through 3. of this subsection[subsection (c)1. of this Section]*** shall prohibit a licensee from utilizing public information, including information regarding real estate **closed[sold]** by another licensee, to market his or her real estate brokerage services to consumers.

(2) A licensee who served as a buyer's agent may advertise his or her role in a sale after a closing has occurred if the advertisement clearly and visibly states that the licensee's participation was as the buyer's agent.[(1) If promoting or advertising the real estate to the general public, the broker shall have a written listing agreement signed by the owner.

(2)(a) After a closing has occurred, a buyer's agent may advertise his or her role in the sale.

(b) The advertisement shall conspicuously state that his or her participation was as the buyer's agent.]

Section 2. Content Required. (1)(a) The principal broker, or his or her designee, shall establish written standards for review and approval of advertising activity of the real estate company and affiliated licensees to ensure compliance with KRS Chapter 324 and 201 KAR Chapter 11.

(b) Pursuant to KRS 324.160(6), a principal broker shall **be** held liable for **acts[repeated violations]** by ***an*** affiliated ***licensee or licensees[licensee(s)]*** **that the principal broker knew or should have known about that are** in violation of either the principal broker's standards for review and approval**,** or KRS Chapter 324 and 201 KAR Chapter 11.

(2) All advertisements shall include:

(a) The full name of the real estate brokerage company registered with the commission; or

(b) The full name of the principal broker registered with the commission, with a clear designation of principal broker status.

(3)(a) An advertisement may include in written text an affiliated licensee's first and last name, or an alternate or assumed name as set forth in Section 4 of this administrative regulation, as registered with the commission, ***if[so long as]*** the principal broker has informed the commission of the affiliated licensee's first and last name, or alternate or assumed name being used.

(b) Each affiliated licensee shall be limited to the use of one (1) nickname in place of, or along with, the licensee's first name, and it shall be the responsibility of each individual licensee to inform the commission of the nickname being used. A nickname shall not be used unless the nickname is reflected on the licensee's online services portal before use.

Section 3. Display of Content Required. (1) The content required by Section 2(2) ***of this administrative regulation*** shall be displayed in written text. The content ***shall[must]***:

(a) Be clear and visible to a typical observer of the advertisement; and

(b) Not be false, misleading, or deceptive.

(2)**(a)** The content permitted by Section 2(3) of this administrative regulation shall not appear larger than the content required by Section 2(2) of this administrative regulation.

**(b) The requirements of *paragraph (a) of this* subsection *[(2)(a) of this section]* shall not apply to the following promotional materials that advertise a licensee:**

***1. Hats;***

***2. Pens;***

***3. Notepads;***

***4. Apparel;***

***5. Name tags; and***

***6. The sponsorship of charitable and community events [hats, pens, notepads, apparel, name tags, and the sponsorship of charitable and community events].***

**(c) The commission *shall[, in its discretion, may]* waive the**

**requirements of *paragraph (a) of this* subsection*[(2)(a) of this section]* for specific promotional materials not stated in *paragraph (b) of this* subsection*[(2)(b)]* upon finding the proposed promotional material would not constitute false, misleading, or deceptive advertising.**

(3)(a)***1.*** For purposes of real estate company or licensee advertisement via internet, social media, or other digital or online forms of advertisement, every individual viewable page or post shall constitute a separate advertisement; and

***2.[(b)]*** Each advertisement shall contain the content required by Section 2(2) ***of this administrative regulation*** in the page or post header, or visible on the page or post without the observer scrolling or otherwise navigating the page or post to view the content required; or

***(b)[(c)]*** If a page or post cannot reasonably comply with ***Section 2(2) of this administrative regulation[subsection (2)(b) of this Section]***, the advertisement shall include a clickable direct link, that is clear, visible, and identifiable as a link, to a page, post**,** or user account profile that contains the content required displayed in accordance with ***paragraph (a)2. of this*** subsection***[(3)][(2)][(b) of this section]***.

(4) Advertisements that include an audiovisual presentation shall include an audible announcement **or written display** of the content required by Section 2(2) of this administrative regulation at the beginning of the advertisement.

(5) Any internet, social media, and other digital or online form of advertising that was true and accurate at the time it was made shall not be in violation.

(6) A logo that does not contain written text of the content required by Section 2(2) ***of this administrative regulation*** shall not constitute a substitute for the content required.

(7) If the licensee's principal business location is outside Kentucky, the advertisement shall:

(a) Indicate that the licensee holds a Kentucky license to broker real estate; and

(b) Include the regulatory jurisdiction of the licensee's principal business location.

**(8) The requirements established by this administrative regulation shall not apply to logos, brands, or directional and open house signs *if[ so long as]* the logo, brand, directional, and open house signs do not contain the name of a sales associate.**

Section 4. Use of Alternate or Assumed Names. (1) More than one ***(1)*** licensee, whether a team, group, other business arrangement, or real estate brokerage company, may collectively use an alternate or assumed name for advertising with the written approval of the principal broker.

(2) Prior to allowing the use of an alternate or assumed name in advertising, a principal broker shall:

(a) Register, or ensure the registration of, the alternate or assumed name with the commission; and

(b) Ensure that the alternate or assumed name is populated in the principal broker's or affiliated licensee's online services portal.

(3) An alternate or assumed name shall not:

(a) Contain terms that ***may[could]*** lead the public to believe the ***licensee or licensees[licensee(s)]*** approved to use the alternate or assumed name is offering real estate brokerage services independent of the principal broker, unless the alternate or assumed name is for the real estate brokerage company; ***or***

(b) Be used ***by*** more than ***one (1) group of[once by]*** licensees within the principal broker's brokerage company***, unless the alternate or assumed name is for the real estate brokerage company.[; or]***[**(c) Contain the word "company", "firm", or "realty" unless the alternate or assumed name is being used by a real estate brokerage company.**]**

(4) An alternate or assumed name may include reference to a name or person, ***if[so long as]*** the name or person has not lost the ability to engage in real estate brokerage through administrative discipline or by operation of law.

(5) If the alternate or assumed name applies to a team or group, the alternate or assumed name shall **end with[include]** the word "team" or "group."

Section 5. False, Misleading, or Deceptive Advertising. (1) False, misleading, or deceptive advertising is prohibited pursuant to KRS 324.117(1).

(2) An advertisement is false, misleading, or deceptive, if the advertisement:

(a) Is known or reasonably should have been known to be false or contrary to fact at the time of placement of the advertisement;

(b) Misleads **or misinforms** the general public in any manner; or

(c) Would lead a reasonable observer to believe that real estate brokerage services were being offered by an affiliated ***licensee or licensees[licensee(s)]*** independent of their real estate brokerage company or principal broker.

Section 6. Guaranteed Sales Plans. (1) If a licensee advertises a guaranteed sales plan, the licensee shall disclose in writing whether:

(a) A fee is charged for participation;

(b) The real estate shall meet qualifications for participation;

(c) The purchase price under a guarantee of purchase of the owner's real estate shall be determined by the licensee or a third party;**[and]**

(d) The owner of the real estate shall purchase other real estate listed for sale by the licensee or his or her designee**; and**

**(e) An exclusive buyer agency agreement is required**.

(2) The advertisement may be in print **or electronic display**, on radio, or on television and shall be clear and understandable.

(a) For print **or electronic display** advertising, the letters***[that]*** shall be at least twenty-five (25) percent the size of the largest letter in the advertisement;

(b) For television advertising, written communication shall appear on the screen***:***

***1.*** At least three (3) seconds for the first line of lettering and at least one (1) second for each additional line of lettering***;*** and

***2.*** In letters that shall be at least eighteen (18) video scan lines in size for uppercase letters or at least twenty-four (24) video scan lines for uppercase capital letters if uppercase capitals and lowercase letters are used.

Section 7. Client Advertising. Consistent with KRS 324.117(4), a licensee shall advise his or her client of the advertising obligations contained in this administrative regulation.

Section 8. Effective Dates. The commission shall begin enforcement of Section 3 ***of this administrative regulation*** **six (6) months[sixty (60) days]** after the effective date of this administrative regulation.[A sign shall not be placed on any property by a real estate licensee without the written consent of the owner.

Section 3. (1) In accordance with KRS 324.117(4), a real estate property print advertisement of a licensee, or an offer or solicitation to provide brokerage services by a licensee, related to marketing or identifying real property for sale or lease, shall include the name of the real estate company where the licensee's license is held or the name of the real estate company's principal broker with whom the licensee is affiliated.

(2) If the advertisement includes the name of the real estate company's principal broker, the principal broker's name shall include his or her title as principal broker or be followed by any other clear designation of his or her status as a broker.

(3) The requirements in this section shall apply to advertisements for listed property only.

Section 4. (1) An advertisement by a licensee shall be approved by:

(a) The principal broker with whom the licensee is affiliated; or

(b) An individual designated by the principal broker to approve the advertisement.

(2) A principal broker shall require his or her licensee to:

(a) Discuss with the property owner-client the advertising requirements of KRS 324.117;

(b) Provide the owner-client with written notice of these

~~advertising requirements; and~~

~~(c) Obtain the owner-client's written agreement to comply with the advertising requirements.~~

~~Section 5. A licensee may advertise public information, such as sales price, of properties that have sold and closed, even if the licensee did not have a written listing agreement on the property.~~

~~Section 6. A licensee may advertise the listings of another real estate brokerage company if:~~

~~(1) The licensee has requested and obtained the listing broker's consent to advertise the other company's listing or listings; and~~

~~(2) The licensee's advertisement of the other company's listings includes the complete name of the other real estate brokerage company.~~]

LOIS ANN DISPONETT, Chair
H.E. CORDER II, Executive Director
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**PUBLIC PROTECTION CABINET**
**Kentucky Real Estate Authority**
**Kentucky Real Estate Commission**
**(As Amended at ARRS, November 12, 2019)**

**201 KAR 11:121. Standards of professional[~~Improper~~] conduct.**

RELATES TO: KRS 324.010(3), 324.111, ***324.112,*** 324.121, 324.160, ***324.281(5),*** 324.310, 324.360, ***381.9203(1), (3), 383.580, [~~324.281(5),~~]*** 24 C.F.R. 3500, 44 C.F.R. 64.3(b)***, 12 U.S.C. 2601-2617***

STATUTORY AUTHORITY: KRS ***324.121, 324.160(4)(e),*** 324.281(5), 324.282, 324.360

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and 324.282 require[~~requires~~] the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. KRS 324.121 authorizes a principal broker to designate an affiliated licensee to act as agent for a seller or lessor, buyer or lessee, or prospective buyer to the exclusion of all other licensees associated with the principal broker.***[~~This administrative regulation establishes requirements for designated agency.~~]*** KRS 324.360(2) requires the commission to promulgate an administrative regulation authorizing a seller's disclosure of conditions form ***with[~~whose~~]*** content ***as[~~is~~]*** set forth by KRS 324.360(3). ***[~~This administrative regulation establishes the required Seller's Disclosure of Property Condition form.~~]*** KRS 324.160(4)(e) authorizes the commission to take disciplinary action if a licensee acts for more than one (1) party in a transaction without the knowledge of all parties. This administrative regulation establishes ***requirements for designated agency; the required Seller's Disclosure of Property Condition form;*** a specific process and form for disclosing prior relationships between parties in a residential transaction***;[~~, Additionally, this administrative regulation establishes~~]*** standards and requirements, to inform and set certain standards for licensees and to protect the public, regarding delivery of signed documents, broker supervision, broker record retention, sales associate affiliation and termination, and written agreements between licensees and consumers to provide real estate brokerage services, including standards for listing and purchase contracts***; and[~~, This administrative regulation establishes~~]*** behavior considered improper conduct.

Section 1. Improper Conduct.

(1) In addition to the obligations and prohibitions set forth in KRS 324.160, a licensee shall not[~~Definition. "Guaranteed sales plan" means an offer or solicitation to guarantee the:~~

~~(1) Sale of an owner's real estate; or~~

~~(2) Purchase of the owner's real estate if the owner's real estate is not sold by the broker.~~

~~Section 2.(1) It shall constitute improper conduct for a licensed agent to~~]:

(a) Accept or agree to accept, or offer or agree to offer, anything of value to another person in violation of the federal Real Estate Settlement Procedures Act, 12 ***U.S.C.[~~U.S.C.S.~~]*** 2601 through 2617 ("RESPA"). [~~Accept or agree to accept, without written disclosure to the seller and buyer or lessor or lessee on the purchase or lease contract, a referral fee from any person in return for directing client or customer to that person, or another, who provides or agrees to provide any goods, service, insurance or financing related to a transaction involving real estate~~]. This provision shall not affect paying or receiving referral fees between principal brokers[~~licensed agents~~] for brokerage services;

(b) Refuse or prohibit any prospective purchaser from viewing or inspecting real estate listed for sale or lease with the real estate brokerage company with which the licensee is affiliated[~~agent, or with the agent's company~~], without the written and signed direction of the listing or leasing client[~~owner~~]. This provision shall not be construed to permit otherwise unlawful discrimination;

(c) Offer real estate for sale or lease without written consent from the person or persons, or entity or entities authorized to sell or lease the subject real estate;

(d)[~~(c)~~] Fail to satisfy one (1) or more of the following fiduciary duties owed to the licensee's client:

1. Loyalty;
2. Obedience to lawful instructions;
3. Disclosure;
4. Confidentiality;
5. Reasonable care and diligence; and
6. Accounting;

(e) Fail to satisfy one (1) or more of the following duties owed to the licensee's prospective client:

1. Good faith;
2. Fair dealing; and
3. The[~~**fiduciary**~~] duty of confidentiality;

(f) Fail to satisfy one (1) or more of the following duties owed to a consumer or to any other party in a transaction:

1. Good faith; and
2. Fair dealing***;[~~;~~]***

(g) Enter an ongoing team or group relationship with any other licensee at the same brokerage company without the written consent of the principal broker;

(h) Induce any party to a contract for sale or lease to break ***the[~~such~~]*** contract for the purpose of substituting in lieu thereof a new contract for sale or lease with another client;

(i) If advertising real property at an absolute auction, sell the advertised property to anyone other than the highest bona fide bidder on the day of the auction; and

(j) If dually licensed as an auctioneer and real estate licensee, before a real estate licensee commences an auction, the licensee shall disclose his or her status as a real estate licensee to potential purchasers and whether he or she intends to bid during the auction.[~~(d) Advertise a guaranteed sales plan without:~~

~~1. Disclosing whether:~~

~~a. A fee is charged for participation;~~

~~b. The real estate shall meet qualifications for participation;~~

~~c. The purchase price under a guarantee of purchase of the owner's real estate shall be determined by the licensee or a third party; and~~

~~d. The owner of the real estate shall purchase other real estate listed for sale by the licensee or his or her designee; and~~

~~2. Including, in:~~

~~a. Print advertising, letters that shall be at least twenty-five (25) percent the size of the largest letter in the advertisement;~~

~~b. Radio advertising, communication that shall be clearly understandable; or~~

~~c. Television advertising:~~

~~(i) Verbal communication that shall be clearly understandable;~~

~~(ii) Written communication that shall appear on the screen at least three (3) seconds for the first line of lettering and at least one (1) second for each additional line of lettering and in letters that shall be at least eighteen (18) video scan lines in size for uppercase letters or at least twenty-four (24) video scan lines for uppercase capital letters if uppercase capitals and lowercase letters are used; or~~

~~(iii) Any combination of verbal and written communication that shall comply with the requirements of this clause; or~~

~~(e) Violate a provision of KRS Chapter 324 or 201 KAR Chapter 11 governing brokers, sales associates, or real estate transactions.~~]

(2) The fiduciary duty of confidentiality, if owed, shall survive the termination of the Agency Consent Agreement contemplated in Section 6 of this administrative regulation.

(3) It shall not be considered improper conduct for a licensee [~~licensed agent~~] to advertise the fee or other compensation the principal broker[~~licensed agent~~] agrees to charge for his or her services.

(4) It shall not be considered improper conduct for a licensee to offer rebates, discounts, or other inducements to consumers, prospective clients, or clients to use the licensee's services or truthfully advertise the same.

(5) It shall not be considered improper conduct for a licensee to use his or her registered nickname in place of the licensee's first name anytime the licensee ***shall[~~is required to~~]*** identify himself or herself on an official document or to the commission.

Section 2. Submission of Written Offers.

(1) If a principal broker has entered into a written listing agreement, or any other written agreement, under the terms of which the principal broker agrees to provide real estate brokerage services for a fee, compensation**,** or other valuable consideration for the client, the principal broker shall provide, unless **specifically waived or modified by the client in writing[~~otherwise agreed in writing with the client~~]**, for real estate that is the subject of the written agreement, the following services:

(a) Accept delivery and submit to the client, without delay, all written offers to lease or purchase;

(b) Accept all earnest money deposits that are presented to the principal broker or an affiliated licensee of the principal broker;

(c) Until the completion of the transaction, assist the client in developing, communicating, negotiating, and presenting offers, counteroffers, and notices that relate to offers and counteroffers; and

(d) Answer the client's questions relating to offers, counteroffers, notices, and contingencies involved in the lease or purchase.

(2)(a) Each principal broker, or an affiliated licensee of the principal broker, who represents a client shall, without delay, submit all written offers to lease or purchase real estate from the principal broker's client to the person or legal entity authorized to sell or lease the property or to the principal broker, or an affiliated licensee of the principal broker, who has entered into a written agreement according to subsection (1) of this section. **A licensee representing a seller shall submit a notice in writing to the licensee representing a buyer of the date and time when the offer was presented to the seller.**

(b) If the principal broker is acting as a transactional broker, the principal broker shall follow the lawful instructions of the parties and provide the brokerage services as outlined in the transactional brokerage agreement.

(3) Failure to comply with ***this section[~~Section 2 of this administrative regulation~~]*** shall constitute gross negligence in violation of KRS 324.160(4)(v).

Section 3. Listing and Purchase Contracts.

(1) A listing contract completed by or at the direction of a licensee shall include the:

(a) Listing price of the property, unless the sale is to be by auction;

(b) Date and time of the signing of the listing contract for all parties who sign;

(c) First and last name of the principal broker and the full name of the real estate brokerage company;

(d) Effective date and time of listing and advertising, if different;

(e) Date of expiration of the listing contract;

(f)**[~~The method and terms of cancellation of the listing contract;~~**

**~~(g)~~]** Fee, compensation, or other valuable consideration agreed upon between the principal broker and the client;

**(g)[~~(h)~~]** Address or a general description of the real estate sufficient to identify the ***parcel or parcels[~~parcel(s)~~]***;

**(h)[~~(i)~~]** Signatures **and printed names** of all parties necessary to affect a sale of the property, including any dower or courtesy considerations or the official representative of a **legal[~~corporate~~]** entity, that is the subject of the listing agreement;

**(i)[~~(j)~~]** Special directions of the client concerning limitations or restrictions on showings; and

**(j)[~~(k)~~]** Date, time**,** and***[~~,~~]*** initials for all changes on the contract prior to acceptance.

(2) An offer to purchase completed by, or at the direction of, a licensee shall include the:

(a) Purchase price or a valid escalation clause with the maximum purchase price;

(b) Amount of contract deposit, if given, who is to hold the deposit, and the time period to deliver the deposit;

(c) Date and time of signing of the offer for all parties who sign;

(d) Date and time when the offer expires;

(e) Address or a general description of the real estate sufficient to identify the ***parcel or parcels[~~parcel(s)~~]***;

(f) Signatures of all parties making the offer and the printed first and last name of the licensee who completed or directed the completion of the offer;

(g) Date, time, and initials for all changes on the contract prior to acceptance;

(h) Provision setting forth the date by which, or the date range within, the closing shall occur and when possession shall be given to the buyer; and

(i) Proposed payment terms.

(3) A counteroffer completed by, or at the direction of, a licensee shall include any amendments to any term required by subsection (1) and (2) of this section and:

(a) Date and time of signing of the counteroffer for all parties who sign;

(b) Date and time when the counteroffer expires;

(c) Signatures of all parties making the counteroffer;

(d) The first and last name of the licensee who completed or directed the completion ***of*** the offer, if not found on the original offer or a previous counteroffer; and

(e) Date, time, and initials for all changes on the contract prior to acceptance.

(4)(a) If a licensee presents an offer to purchase real estate for which an executory contract to sell the property is already in existence, the offer shall include language that indicates in writing that the offer is contingent upon the nonperformance of the existing executory contract.

(b) The contingency language required by ***paragraph (a) of this[~~the previous~~]*** subsection shall indicate the disposition of any contract deposit and be:

1. Inserted by the licensee who completes or prepares the offer to purchase, if licensee is aware of the existing contract; or

2. Made by the listing licensee as a counteroffer.

(5) If financing is involved, a contract providing for the purchase of property shall specifically state:

(a) The manner in which the purchase shall be financed; and

(b) The amount of any encumbrance and whether it is to be underwritten by the seller or a commercial institution or otherwise.

(6) Any agreement for compensation, including rebates and inducements, from a licensee to his or her client shall be in writing.

(7)**(a)** Prior to the expiration of a current listing agreement, another licensee shall not contact the seller to obtain a subsequent listing agreement.

**(b) Notwithstanding *paragraph (a) of this subsection[~~subsection (7)(a) of this Section~~]*, a licensee may discuss newly listing the seller's property that is currently listed if:**

**1. The seller initiates contact with the new licensee to obtain a new listing contract;**

**2. The proposed listing contract states that it shall not take effect until the expiration of the seller's current listing contract with the original licensee; and**

**3. The licensee and seller properly complete and sign the Seller-Initiated Listing Form.**

**Nothing in this subsection shall prohibit a licensee from approaching a seller to list the seller's property following the seller's cancellation of their current listing contract or expiration of the current listing contract[~~(a) The seller may contact another licensee to obtain a subsequent listing agreement.~~**

**~~(b) A different principal broker may enter into a subsequent listing agreement with the seller if the new listing agreement will take effect upon the expiration or proper cancellation of the current listing agreement; and~~**

**~~(c) The licensee and seller properly complete and sign the Seller-Initiated Re-Listing Form~~].**

(8) If a licensee fails to comply with the requirements in ***this section[~~Section 3~~]***, the licensee's conduct and dealings shall be considered improper in violation of KRS 324.160(4)(u).

Section 4. Required Disclosures.

(1) A licensee shall direct the seller-client of a single family residential real estate dwelling**, duplex, triplex, fourplex, condominium, or townhouse** to accurately complete and sign the Seller's Disclosure of Property Condition form required by KRS 324.360, including all necessary initials and signatures, unless the seller-client refuses and documents his or her refusal, or the licensee documents the seller-client refusal, on the Seller's Disclosure of Property Condition form.

(2) A licensee who is involved in the brokerage of a condominium transaction shall advise the client in writing of the client's right to receive the ***Condominium Seller's*** Certificate required by KRS 381.9203(1) and the purchasing client's right to void the sales contract consistent with KRS 381.9203(3).

Section 5. Prospective Client Disclosures.

(1) A licensee shall complete, time and date, and deliver to the appropriate prospective client**[~~or party~~]** the **commission's *[~~"~~]***Guide To Agency Relationships***[~~"~~]*** at the earliest of the following times:

(a) Prior to entering into a **contemplated** written agreement to provide real estate brokerage services for compensation with a prospective client**[~~or party~~]**;

(b) Prior to entering into **a contemplated[~~an~~]** oral agreement to provide real estate brokerage services with a prospective client**[~~or party~~]**; or

(c) Prior to signing an agency consent agreement.

(2) The licensee shall solicit the signature of the prospective client**[~~or party~~]** on the Guide to Agency Relationships as acknowledgement by the prospective client**[~~or party~~]** of his or her receipt. The licensee shall maintain a record that the prospective client**[~~or party~~]** signed the Guide to Agency Relationships. If the prospective client**[~~or party~~]** refuses to, or does not, sign the Guide to Agency Relationships upon receipt, the licensee shall document the delivery, or attempted delivery, including a date and time, to the appropriate prospective clien**[~~or party~~]**.

(3) The completed Guide to Agency Relationships shall provide or include:

(a) The agency relationships available between the licensee and client or party in Kentucky;

(b) The first and last name of the licensee completing the form, the first and last name of the principal broker of the licensee, and the full name of the licensee's real estate company;

(c) The name of the prospective client**[~~or party~~]**; and

(d) The signature, time, and date of signing by the prospective client**[~~or party~~]**.

(4)**[~~The commission's Guide to Agency Relationships may be personalized by a principal broker to include the principal broker's company-specific information, including logos.~~**

**~~(5)~~]** The provisions of this section***[~~of this administrative regulation~~]*** shall not apply to:

(a) The sale of real estate at auction; or

(b) A commercial transaction.

Section 6. Agency Consent Agreement.

(1) Prior to entering into a written agreement to provide real estate brokerage services or completing, or directing the completion of, a contract, offer, or lease for a real estate transaction:

(a) The licensee shall complete and deliver the Agency Consent Agreement to the prospective client**[~~or party~~]**; and

(b) Seek and obtain written consent to the Agency Consent Agreement from the prospective client**[~~or party~~]**.

(2) The commission's Agency Consent Agreement shall provide:

(a) The first and last name of the client**[~~or party~~]**, the first and last name of the ***licensee or licensee's[~~licensee(s)~~]*** and principal broker, and the full name of the real estate brokerage company;

(b) The specific agency relationship proposed between the principal broker of the real estate brokerage company, and any affiliated licensee of the real estate brokerage company, and the prospective client**[~~or party~~]**;

(c) If applicable, any known business, family, or personal relationship the licensee has with another party to the contemplated transaction who is not a party to the Agency Consent Agreement and an explanation of the nature of the relationship or relationships;

(d) Whether the transaction involves an unrepresented party; and

(e) Disclosure of prior contact with a former prospective client who is involved in the presently contemplated real estate transaction.

(3) The Agency Consent Agreement shall be updated, and written consent obtained, if the agency relationship initially established later changes.

(4) The provisions of this section***[~~of this administrative regulation~~]*** shall not apply to a:

(a) Sale of real estate at auction; or

(b) Commercial transaction.

(5) The form of agency identified in the most recent Agency Consent Agreement shall terminate upon either:

(a) The provision of the agreed upon services; or

(b) At the closing of the contemplated real estate transaction.

Section 7. Affiliation.

(1) The principal broker shall be the owner of all written contracts for provision of real estate brokerage services, including ***items such as[~~but not limited to~~]*** listing contracts, purchase contracts, and exclusive agency agreements.

(2) When a principal broker, or a licensee acting on behalf of the principal broker, enters into a written agreement with a client, an agency relationship is formed, and the client is the principal.

(3) Absent operating as a designated agency company, each licensee affiliated with the real estate brokerage company shall have the same agency relationship with respect to a client, prospective client, or party as the principal broker in an in-house transaction.

(4) If only one (1) broker is affiliated with a company, he or she shall be the principal broker.

(5) If one (1) or more additional licensees is affiliated with the company, one (1) broker shall be the principal broker registered with the commission.

(6)(a) Unless there is a written contract stipulating otherwise, a licensee shall, upon termination of his or her affiliation with his or her principal broker, immediately turn over to the principal broker***[~~any and~~]*** all records described in Section 9(1)(a)-(h) of this administrative regulation obtained during his or her affiliation regardless of whether the information was originally received from his or her principal broker, copied from the records of the principal broker, or acquired by the licensee during his or her affiliation.

(b) Nothing in ***paragraph (a) of this[~~the previous~~]*** subsection shall require an affiliated licensee to deliver to the principal broker records which the principal broker is not under an obligation to retain consistent with this administrative regulation or records which are already in the principal broker's possession.

(7)(a) A principal broker may be principal broker of more than one real estate brokerage company.

(b) A principal broker ***shall[~~may~~]*** not also be an affiliate broker at another real estate brokerage company, except for as provided in KRS 324.112(5).

(8) A sales associate or broker affiliated with a principal broker shall only be affiliated with one principal broker at one office, or branch office, location.

(9) A real estate brokerage company may have more than one (1) physical office location, including branch offices.

Section 8. Facsimile and Digital Transmissions.

(1) A licensee may use facsimile (FAX) devices and digital transmissions to transmit and receive documents according to the provisions of KRS Chapter **369[~~324~~]** and ***201 KAR Chapter 11[~~the administrative regulations promulgated thereunder~~]***.

(2)**[~~If a licensee uses facsimile devices or digital transmissions to transmit and receive documents, the time of delivery of a document shall be the time of transmission for the facsimile (FAX) device or the time that it is sent from the originator.~~**

**[~~(3)~~]** A document received by facsimile devices or digital transmissions shall be immediately placed in the licensee's file and retained as required by this administrative regulation.

Section 9. Principal Broker Duties and Prohibitions.

(1) A principal broker shall confidentially preserve, either in hard copy or digital format, for five (5) years following its consummation or failure, records in one (1) file relating to any real estate transaction, which shall include:

(a) Any written offers to lease or purchase the real estate;

(b) The acquisition and disbursement of any monies;

(c) Listing and sales contracts or leases;

(d) Closing sheets;

(e) Seller's ***Disclosure of Property Condition*** and Condominium ***Seller's*** Certificate***[~~disclosure~~]*** forms;

(f) Agency Consent Agreement forms;

(g) Guide to Agency Relationships forms; and

(h) Timeshare records.

(2) A principal broker who engages in property management shall also confidentially preserve, either in hard copy or digital format, for five (5) years:

(a) Property management agreements;

(b) Leases;

(c) Monthly owner statements and reports;

(d) Owner and unit ledgers; and

(e) Bank statements relating to property management.

(3) ***If[~~In the event of~~]*** the death or incapacity of the principal broker ***occurs***, records required to be maintained pursuant to this section shall be maintained by:

(a) **A new principal broker or** a designated manager, so designated previous to the time of the death or incapacity of the principal broker to maintain the records;

(b) The real estate brokerage company of the principal broker at the time of the death or incapacity of the principal broker, if the company continues to be an active company;

(c) A licensee designated by the commission to maintain the records and serve as the principal custodian of the records, without any liability or obligation, other than to confidentially maintain the records and to provide the records to a party as required by law or by demand of the commission; or

(d) Any appointee of the commission who will agree to maintain the records and serve as the principal custodian of the records, without any liability or obligation, other than to confidentially maintain the records and to provide the records to a party as required by law or by demand of the commission.

(4) At the time of signing all documents, the principal broker, or an affiliated licensee of the principal broker, shall ensure that a copy of all documents are delivered to all parties executing the documents ***if[~~where~~]*** the document has been provided, prepared by, or at the direction of the principal broker or an affiliated licensee of the principal broker.

(5) The principal broker, an affiliated licensee of the principal broker, shall ensure that a debit and credit type closing statement is furnished to a client upon closing a real estate transaction unless the financial institution, title agency, the attorney involved, or other authorized individuals, has prepared the closing statement.

(6) ***A[~~No~~]*** principal broker shall ***not*** be a party to an exclusive listing contract which contains an automatic continuation of the period of ***the[~~such~~]*** listing beyond the fixed termination date set forth therein.

(7) If a principal broker permits teams, a principal broker shall ***notify[~~notifying~~]*** the commission in writing of the alternate or assumed name used by the team and the name of the team leader before permitting team advertising.

(8) If a principal broker authorizes team, group, or other business arrangements between affiliated licensees, the principal broker shall:

(a) Offer, at a minimum, company procedures for advertising, agency relationships **and handling confidential information**, management and operations specific to team, group, or other business arrangements between affiliated licensees;

(b) Designate a licensee who shall be responsible, along with the principal broker and designated manager, for the operations of the team, group, or other business arrangement. The designated licensee shall be referred to as the "team leader" regardless of how the team, group**,** or other business arrangement labels itself;

(c) Maintain a current list of all affiliated licensees, employees, office personnel, and clerical staff who are a part of each individual team, group, or other business arrangement; and

(d) Notify the commission in writing of the first and last name and license number of the team leader.

(9) A principal broker shall ensure any employee or unlicensed personal assistant, salaried or independently contracted, employed by, retained by, or under the direction of the principal broker or any affiliated licensee, are in compliance with the applicable provisions of KRS Chapter 324 and 201 KAR Chapter 11.

(10) A principal broker shall implement and maintain an appropriate information security system that shall:

(a)***1.*** Notify licensees, management, employees, officer personnel, and clerical staff of company policy and procedures related to confidential information, including in-person interactions or discussions in the office environment;

***2.[~~(b)~~]*** Prohibit the disclosure of confidential information by licensees, management, employees, office personnel and clerical staff;**[~~and~~]**

***3.[~~(c)~~]*** Require notification to each client involved in a transaction, if the principal broker becomes aware of an unauthorized or inadvertent disclosure of confidential information relating to that transaction**; and[~~.~~]**

***4.[~~(d)~~]*** **Prohibit an employee from assisting more than one (1) designated agent in the same transaction if the designated agents represent different clients in that transaction.**

***(b)[~~(e)~~]*** Nothing in this provision shall prohibit a licensee who is party to an Agency Consent Agreement from maintaining a separate individual client file containing confidential information.

(11) A principal broker of a real estate brokerage company that practices designated agency shall require that all documents that contain confidential information relating to a client be kept in an individual file maintained by the principal broker and accessed only by the principal broker, designated manager, or designated agent appointed by the principal broker to represent the individual.

(12) A principal broker who appoints a designated manager of the real estate brokerage company, a registered company branch, team, group, or other business arrangement shall notify the commission in writing of the name of the designated manager within ten (10) days of the appointment.

Section ***10.[~~11.~~]*** Property Management.

(1) A principal broker, or an affiliated licensee, shall not engage in property management without a current written property management agreement.

(2) A property management agreement shall contain, at a minimum:

(a) The full name and address of the principal broker's real estate brokerage company as registered with the commission;

(b) The name and address of the client for whom the property is being managed;

(c) The address of the real estate being managed and the number of units;

(d) The effective dates of the agreement, and a provision stating whether the client agrees to automatic annual renewal;

(e) A provision stating the method for early termination;

(f) The amount of, or the method for computing, the amount of compensation to the principal broker;

(g) The amount of, or the method of determining, the minimum security deposit to be collected from tenants for each unit managed;

(h) The name and address of the bank where the principal broker's escrow or management account is held, and, consistent with KRS 383.580(1), the account number. This information shall also be contained in the lease;

(i) A provision which is in accord with KRS 383.580 setting forth the procedures governing returning or retaining the security deposit. This provision shall also be contained in the lease;

(j) A provision setting forth the conditions under which the principal broker ***may[is authorized to]*** pay expenses related to the real estate being managed;

(k) A statement setting forth the date when the principal broker shall send the client an accounting of the transactions related to the real estate being managed;

(l) A copy of the form of the lease document which the principal broker shall have the tenant sign shall be attached to the agreement;

(m) A provision whereby the client certifies that he ***or she*** has received a duplicate copy of the agreement and the attached lease form; and

(n) The signature and date of signature of the client and the principal broker.

(3) A principal broker shall maintain, in electronic or written form:

(a) An owner ledger for each client of real estate being managed***;[;]***

(b) A unit ledger for each unit in the real estate being managed***; and[;]***

(c) Upon the written request of the client of the property being managed, the principal broker shall provide a unit ledger by tenant.

(4) Money received shall be deposited into an escrow or management account of the principal broker within three (3) business days of receipt.

(5) The amount of money received shall be entered into the owner and unit ledgers.

(6) A receipt shall be given for money received.

(7) Expenses paid by the principal broker shall be documented by invoice or receipt, by unit, and retained with a principal broker's records.

(8) Adjustments to a security deposit shall be made in accordance with KRS 383.580. Adjustments shall also be entered on the owner and unit ledgers.

(9) On the date determined by the parties, a principal broker shall send a monthly accounting to a client of transactions related to the real estate being managed, by unit.

(10) Within sixty (60) days of the termination of a management agreement, a principal broker shall send the client a final accounting that contains any transaction that occurred after the last monthly accounting.

(11) A principal broker who has an ownership interest in the real estate being managed shall:

(a) Maintain a unit ledger for each unit in the real estate being managed; and

(b) Comply with KRS 383.580 relating to receipt, deposit, and adjustment of tenant security deposits.

Section ***11.[12.***] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Seller-Initiated **Listing[~~Re-Listing~~]** Form", ***KREC Form 403*, 10/2019 [~~7/2019~~]**;

(b) "Seller's Disclosure of Property Condition", ***KREC Form* 402, 10/2019[~~7/2019~~]**;

(c) "Condominium Seller's Certificate", ***KREC Form* 404, 10/2019[~~7/2019~~]**;

(d) "Guide to Agency Relationships", ***KREC Form* 400, 10/2019[~~7/2019~~]**;[~~and~~]

(e) "Agency Consent Agreement **- Buyer"**, ***KREC Form* 401B, 10/2019;[~~7/2019~~]**

**(f) "Agency Consent Agreement - Seller", *KREC Form* 401S, 10/2019**.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available from the commission's Web site: www.krec.ky.gov.

LOIS ANN DISPONETT, Chair
H.E. CORDER II, Executive Director
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 15, 2019

FILED WITH LRC: October 15, 2019 at 11 a.m.

CONTACT PERSON: Marc Manley, Acting General Counsel, Kentucky Real Estate Authority, phone (502) 564-7760, fax (502) 564-1538, email marc.manley@ky.gov.

**PUBLIC PROTECTION CABINET**
**Kentucky Real Estate Authority**
**Kentucky Real Estate Commission**
**(As Amended at ARRS, November 12, 2019)**

**201 KAR 11:170. Education provider requirements[~~Real Estate School and pre-license course approval~~].**

RELATES TO: KRS 324.010(7), 324.046(1), (2), (5), 324.085, 324.090, 324.160(1)(c), (4)(u), 324.281(7)

STATUTORY AUTHORITY: KRS 324.010(7), ***(8)***, 324.046(1), (2), 324.085, 324.160, 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and 324.282 ***require[authorize]***[~~authorizes~~] the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.010(7) and (8) ***authorize[authorizes]*** the commission to approve a real estate school. KRS 324.046(1) and (2) require an applicant for initial licensure as a broker or sales associate to have completed the specified number of courses from an approved or accredited real estate school. KRS 324.085(4) and (5) require the commission to promulgate administrative regulations necessary to implement the continuing education, post-licensure education, and instructor qualification requirements of KRS 324.085. KRS 324.046(1)(a) requires the commission to promulgate an administrative regulation determining the required course content of a brokerage management skills course for all broker applicants. This administrative regulation establishes the requirements and application procedures for approval as a real estate school, post-licensing education provider, and a continuing education provider***;[;*** ***This administrative regulation also establishes]*** the requirements and application procedures for approval of instructors and courses for license credit***;[;*** ***This administrative regulation establishes]*** procedures for implementing the requirements for post-license education and the requirements for courses offered through distance education***;[;*** ***This administrative regulation establishes]*** the requirements of the brokerage management skills course***;*** and incorporates the curriculum by reference.[~~This administrative regulation establishes the requirements and application procedures for an approved real estate school seeking approval of courses for license credit.~~]

Section 1. Education Providers.

(1)(a) Accredited institutions and approved real estate schools may teach:

1. Pre-licensing education;

2. Post-licensing education;[~~and~~]

3. Continuing education**; and**

**4. Broker curriculum education**.

(b) Consistent with KRS 324.010(7)(b), National Association of Realtors (NAR) recognized programs that meet the following

criteria shall be***[deemed]*** an approved real estate school:

1. Has a school administrator;

2. Is an affiliated organization with NAR or the Kentucky Realtors; and

3. Would otherwise be regulated by Kentucky Commission on Proprietary Education***,*** but the program is entitled to exemption from certification by Kentucky Commission on Proprietary Education.

(2) National Association of Realtors (NAR) recognized programs that do not meet the criteria established in ***subsection (1)(b) in this section[~~Section 1(1)(b)~~]*** shall only teach:

(a) Post-licensing education;

(b) Continuing education; and

(c) Designation courses toward broker curriculum.

(3) Governmental bodies shall only teach post-licensing education and continuing education.

(4) Broker-affiliated training programs may teach post-licensing education.

Section 2. Accredited Institutions and Approved Real Estate Schools; Initial Application for Provider Approval.

(1) To apply for initial certification, an approved real estate school shall submit:

(a) ***A*** completed Education Provider Application and Renewal Form, KREC Form 101, signed by the education provider's administrator or representative;

(b) ***A*** copy of the license or certification from the Kentucky Commission on Proprietary Education, if applicable;

(c) ***A*** sample copy of an official transcript or certificate that will be issued by the school;

(d)1. A copy of a sample contract or agreement, to be signed by the student, that outlines the class schedule, assignments or projects, examination requirements, grading system, and attendance requirements;

2. An approved real estate school offering a prelicensing course shall include a statement in the school application that a criminal conviction may, consistent with KRS Chapter 335B and 201 KAR 11:210, Section 6, prevent an applicant from qualifying for licensure under KRS 324.045;

(e)1. An acceptable explanation of how the provider will verify a student's identity, ensure the student completes the course, and maintain the anonymity of student evaluations;

2. For classroom courses, at a minimum, the provider shall require a student to sign in and sign out of each course; and

(f) Any documentation necessary to explain an answer on the application.

(2) To apply for renewal of an approved real estate school's approval, an approved real estate school shall submit ***an[a]*** Education Provider Application and Renewal Form, KREC Form 101, signed by the education provider's administrator or representative, outlining any changes in the information submitted pursuant to subsection (1) of this section.

(3) After the initial approval, an approved real estate school shall renew annually consistent with subsection (2) of this section.

(4) An approved real estate school shall notify the commission in writing within ten (10) days of a substantive change in the information submitted on the initial or renewal application or in an attachment thereto.

Section 3. Education Provider; Initial Application for Provider Approval.

(1) To apply for initial certification, an education provider offering continuing education or post-license education shall submit:

(a) ***An*** Education Provider Application and Renewal Form, KREC Form 101, signed by the education provider's administrator or representative;

(b) ***A*** sample copy of an official transcript or certificate that will be issued by the provider;

(c)1. An acceptable explanation of how the provider will verify a student's identity, ensure the student completes the course, and maintain the anonymity of student evaluations;

2. For classroom courses, at a minimum, the provider shall require a student to sign in and sign out of each course; and

(d) Any documentation necessary to explain an answer on the application.

(2) To apply for renewal of an education provider's approval, ***the*** education provider shall submit ***an[a]*** Education Provider Application and Renewal Form, KREC Form 101, signed by the education provider's administrator or representative, outlining any changes in the information submitted pursuant to subsection (1) of this section.

(3) After the initial approval, an education provider shall renew annually consistent with subsection (2) of this section.

(4) An education provider shall notify the commission in writing within ten (10) days of a substantive change in the information submitted on the initial or renewal application or in an attachment thereto.

Section 4. Education Course Curriculum Requirements.

(1) All courses shall consist of topics that:

(a) Are generally applicable to real estate, including the other professions governed by the Kentucky Real Estate Authority; or

(b) Are specific to Kentucky real estate license law and regulation.

(2) To be approved as an education course, a course shall:

(a) Increase the student's knowledge of the real estate brokerage business; and

(b) Protect the public interest.

(3) Education providers approved by another real property board under the Kentucky Real Estate Authority may submit courses approved by the primary real property board to the commission for approval as a post-licensing and continuing education course.

(4) A course that is solely motivational or considered to be personal development in nature shall not be approved.

(5) The curriculum for a sales associate pre-license course at an approved real estate school shall:

(a) Be conducted for a maximum of nine (9) hours during a calendar day;

(b) Include course content on each of the following topics:

1. Introduction to the real estate business;
2. Real property and the law;
3. Forms of ownership and interests in real estate;
4. Land description;
5 Transfer of title;
6. Title records;
7. Real estate brokerage;
8. Real estate agency;
9. Client representation agreements and required disclosures;
10. Real estate contracts;
11. Real estate financing;
12. Closing a real estate transaction;
13. Real estate taxes and other liens;
14. Real estate appraisal and land valuation analysis;
15. Leases;
16. Fair Housing;
17. Property Management;
18. Land Use controls and property development;
19. Environmental issues in the real estate transaction; and
20. Kentucky real estate licensing law.

(c)1. Instruction on all topics, except Kentucky specific law and regulation, shall be from a text approved by the commission.

2. To have a text approved by the commission, an education provider shall submit to the commission the proposed text and a written explanation of how the text covers the course content on the required topics.

(d) Be a course for academic credit consisting of content focused on real estate, but shall not be a continuing education unit, examination preparation or review, experiential education, or competency testing;

(e) Include a scenario-based practicum or project applicable to the practice of real estate brokerage that:

1. Is to be completed by the individual student, without peer assistance, before sitting for the final examination;

2. Contemplates the use of at least three (3) commission approved transaction related forms;

3. Requires completion of:

a. A real estate purchase contract or a real estate listing contract; and

b. A market analysis of property value.

4. Requires application of topics covered in the sales associate pre-licensing course relating to a transaction based experience; and

5. Is graded on a pass-fail scale.

(f) Be designated specifically as a real estate course by an approved education provider;

(g) Include a closed-book monitored final examination that shall:

1. Consist of 100 multiple choice questions which shall evaluate the student's practical application of real estate principles;

2. Require a passing score of at least seventy-five (75) percent; and

3. Cover all aspects of material covered in the course, including applicable Kentucky licensing laws and administrative regulations; and

(h)1. The pre-licensing provider shall not allow a student to take the final examination more than three (3) times, unless the student retakes the sales associate pre-licensing course;

2. A student ***may[~~shall be permitted to~~]*** retake the final examination no earlier than the fourth day following the date of a failure;

3. After the second failure, the pre-licensing provider shall provide the student with documentation of the ***area or areas[~~area(s)~~]*** of deficiency and the opportunity for additional training on the student's ***area or areas[~~area(s)~~]*** of deficiency consistent with the provider's student enrollment agreement.

(6) Approved pre-license education providers and instructors shall take appropriate steps to maintain the confidentiality of the final examinations. These steps shall include:

(a) Storing examinations and answer keys in a secure place accessible only to the school administrator and the instructor;

(b) Prohibiting students from retaining copies of the final examination and answer sheets;

(c) Monitoring students continuously during examinations; and

(d) Notifying the commission***[~~and taking appropriate steps.~~]*** if an examination is compromised.

(7) The curriculum for a post-license education course shall be in hourly increments from one (1) to nine (9) hours with one (1) hour of course credit allowed for each fifty (50) minutes of actual instruction and consist of thirty-two (32) hours from the courses established in paragraphs (a) and (b) of this subsection and sixteen (16) hours as established in paragraph (c) of this subsection:

(a) The three (3) hour Commission Licensee Compliance course, which shall instruct new licensees on:

1. License statuses and the administrative processes relative to keep a license active and in good standing;

2. A review of controlling definitions;

3. A review of agency principles;

4. Overview of commission duties and functions and relationships with other governmental bodies, regulatory bodies, and professional associations; and

5. A review of disciplinary procedures and administrative case studies.

(b) The requirements in each of the following course topics:

1. Six (6) hours in Agency;

2. Six (6) hours in Contracts;

3. Three (3) hours in Finance;

4. Three (3) hours in Advertising;

5. Three (3) hours in Disclosure;

6. Three (3) hours in Fair Housing;

7. Three (3) hours in Technology and Data Security; and

8. Two (2) hours in Risk Management; and

(c) Sixteen (16) additional hours in approved mandatory courses in excess of the prescribed hours listed in ***paragraph*** (b) ***of this subsection[~~1.-8.~~]*** or in the following elective topics chosen by the licensee:

1. Real Estate Auctions;

2. Anti-trust;

3. Appraisals

4. Home inspections;

5. Land Use;

6. Property Rights;

7. Property Management;

8. Real Estate Investments; and

9. Business Planning.

(d) Contain course content, objectives, and assessments that include scenario-based case studies designed to ensure the application of current real estate information and knowledge to practical brokerage scenarios.

(e) If a licensee takes a post-licensing education course with the same course number more than once, the licensee shall only receive credit for one (1) course completion.

(8)(a)The curriculum for a continuing education course shall be in hourly increments from one (1) to nine (9) hours with one (1) hour of continuing education allowed for each fifty (50) minutes of actual instruction.

(b) If a licensee takes a continuing education course with the same course number more than once in an education cycle, the licensee shall only receive credit for one (1) course completion.

(9) ***[~~"~~]*****All course content required by this administrative regulation shall be submitted to the commission for review and consideration prior to the approval of the course.** ***[~~"~~]***[~~**The commission shall review all course content to ensure that the content meets the requirements established in this administrative regulation and shall be submitted to the commission for consideration.**~~]

Section 5. Pre-license Course Approval for Sales Associates.

(1) To obtain approval for a sales associate pre-license course, an approved education provider shall submit a Pre-license Course Application and Renewal Form, KREC Form 102, for each course for which approval is sought, at least ninety (90) days prior to the scheduled offering of a pre-license education course. The approval shall be valid for one (1) year. The completed form shall by accompanied by:

(a) A completed detailed Course Outline broken into four (4) hour increments to include, if applicable, teaching methods, learning objectives for the course, auxiliary aids, quizzes or examinations, and materials for each course.

(b) The course description and objectives;

(c) A description of the course practicum;

(d) When the final examination shall be conducted;

(e) The textbooks being used and how material will be taught in conjunction with completion of the projects and the final exam;

(f) A copy of the final examination question bank and answer key;

(g) A copy of all written material that the instructor will use in the classroom, including a copy of the curriculum that follows the mandated guidelines, if applicable;

(h) ***A*** completed Instructor Affiliation Form, KREC Form 104, for each instructor who will teach a course; and

(i) The nonrefundable initial review fee of seventy-five (75) dollars.

(2) To renew approval for a sales associate pre-license course, an approved education provider shall submit:

(a) A separate completed Pre-license Course Application and Renewal Form, KREC Form 102, for each course, at least ninety (90) days prior to the current expiration of the pre-license education course;

(b) The nonrefundable renewal review fee of twenty-five (25) dollars; and

(c) A detailed abstract of changes made to the course, course materials, and other required attachments since the initial application or most recent course renewal.

(3) An education provider shall notify the commission in writing within ten (10) days of a substantive change in the information submitted on the initial or renewal application for a sales associate pre-license course or in any attachment thereto.

(4) Every five (5) years an approved education provider shall submit a complete Pre-license Course Application and Renewal Form, KREC Form 102, for each course approval is sought, at least ninety (90) days prior to the scheduled offering of a pre-license education course.

(5) Nothing in this section shall prevent the commission from

requesting the current version of a course from an approved education provider during the five (5) year review period.

Section 6. Continuing and Post-license Education Course Approval.

(1) To obtain approval for a continuing education or post-license education course, an approved education provider shall submit a completed Continuing and Post-license Education Course Application and Renewal Form, KREC Form 103. The approval shall be valid for one (1) year.

(2) At least sixty (60) days prior to the scheduling of a continuing or post-license education course, an approved education provider wishing to offer a continuing or post-license education course shall submit:

(a) ***A*** Continuing and Post-license Education Course Application and Renewal Form, KREC Form 103, and either:

1. The nonrefundable initial review fee of twenty-five (25) dollars for classroom courses or seventy-five (75) dollars for distance education courses; or

2. The nonrefundable renewal review fee of fifteen (15) dollars; and

(b) A completed detailed Course Outline broken into fifty (50) minute increments, to include, if applicable, learning objectives for the course, teaching methods, auxiliary aids, quizzes or examinations, materials, and the policies of the provider;

(c) The textbooks or course materials being used;

(d) A copy of the final examination question bank and answer key, if the course is a distance education course; and

(e) ***A*** completed Instructor Affiliation Form, KREC Form 104, for each instructor who will teach a course.

(3) A provider shall:

(a) Award each attendee listed on the roster who completes the course a course completion certificate that contains:

1. The licensee's name;

2. The licensee's license number;

3. The course completed, including the type of education, course title, and course number;

4. The date of completion; and

5. Signature of the school administrator or course provider representative.

(b) Submit to the commission, within ten (10) days of the student completing an approved continuing or post-license education course, unless the course is completed after December 21 of the calendar year in which case the deadline shall be on or before 11:59 p.m. December 31:

1. An attendance roster through the provider's online portal; and

2. A Course Evaluation, KREC Form ***[E]***106, completed by each attendee listed on the roster; and

(c) Include a notice or warning that if the **continuing education** course is taken after December 21 of the calendar year, the licensee's license may be cancelled if the course is not timely completed; and

(d) Subject only to space limitations, make the course available to all licensees, unless the course is offered by a broker-affiliated training program.

(4) **A course provider may be disciplined[~~Be subject to discipline~~]** by the commission[,] if a course provider fails to submit all attendance and evaluation forms completed and returned by students to the course provider.

(5) A course that has been previously approved within the same education cycle may be conducted by another provider if:

(a) The same instructor teaches the course;

(b) The same number and type of credits are awarded for the course;

(c) The content of the course is the same; and

(d) The hosting provider submits a completed Provider Host Form, KREC Form 105, to the commission thirty (30) days prior to conducting the course.

(6) To renew approval for a continuing or post-license education course, an approved education provider shall submit:

(a) A completed Continuing and Post-license Education Course Application and Renewal Form, KREC Form 103, for each course approval is sought, at least sixty (60) days prior to the current expiration of the continuing or post-license education course, and

(b) A detailed abstract of changes made to the course, course materials, and other required attachments since the initial application or most recent course renewal.

(7) An education provider shall notify the commission in writing within ten (10) days of a substantive change in the information submitted on the initial or renewal application for a continuing or post-license education course or in any attachment thereto.

(8) Every five (5) years an approved education provider shall submit a complete Continuing and Post-license Education Course Application and Renewal Form, KREC Form 103, for each course approval is sought, at least ninety (90) days prior to the scheduled offering of a continuing or post-license education course.

(9) Nothing in this section shall prevent the commission from requesting the current version of a course from an approved education provider during the five (5) year review period.

Section 7. Pre-license Course Approval for Broker Curriculum.

(1) To obtain approval for a broker management or broker curriculum course, an approved education provider shall submit a Pre-license Course Application and Renewal Form, KREC Form 102, for each course approval is sought. The approval shall be valid for one (1) year.

(2) To satisfy the education prerequisites contained in KRS 324.046(1)(a), an applicant for a broker's license shall complete a broker management skills course. The broker management skills course shall:

(a) Satisfy three (3) academic credit hours of the applicant's twelve (12) academic credit hours of real estate courses required to become a broker;

(b)1. Instruction on all topics, except Kentucky specific law and regulation, shall be from a text approved by the commission.

2. To have a text approved by the commission, an education provider shall submit to the commission the proposed text and a written explanation of how the text covers the course content on each of the required topics.

(c) Be a three (3) academic hour comprehensive review of all the skills necessary to run a brokerage office in accordance with the applicable Kentucky licensing laws and administrative regulations relating to real estate and the standards of practice for a broker pertaining to adequate supervision of all affiliated licensees, including:

1. Leadership and management skills;

2. Communications and decision-making;

3. Analyzing the business environment;

4. Analyzing the market;

5. Developing a business plan, including structuring the organization, business systems, and finances;

6. Business policies and procedures;

7. Marketing and advertising;

8. The practical and legal realities of staffing;

9. Recruiting, selecting, and hiring the staff;

10. Professional development;

11. Critiquing operations; and

12. Managing risk.

(d)1. Include a scenario-based practicum or project that shall require each student to develop a sample business plan, a sample financial plan and an office policy and procedure manual. The practicum shall;

2. Be completed by the individual student, without peer assistance, before sitting for the final examination;

3. Require application of topics covered in the broker pre-licensing curriculum;

4. Be graded on a pass-fail scale; and

5. Be allotted up to one hour of course credit for completion and review of this requirement.

(e)1. Require each student to take a comprehensive, closed-book examination consisting of at least seventy-five (75) multiple choice questions;

2. The examination shall be submitted to the commission for approval prior to use in the course;

3. The passing score for the examination shall be a minimum score of seventy-five (75) percent;

4. The broker pre-licensing provider shall not allow a student to take the final examination more than three (3) times, unless the student retakes the broker management skills course;

5. A student ***may[~~shall be permitted to~~]*** retake the final examination no earlier than the fourth day following the date of a failure;

6. After the second failure, broker pre-licensing provider shall provide the student with documentation of the ***area or areas[~~area(s)~~]*** of deficiency and the opportunity for additional training on the student's ***area or areas[~~area(s)~~]*** of deficiency consistent with the provider's student enrollment agreement.

(e) The education provider shall report a course completion certificate to the commission through the provider's online services portal within ten (10) days of issuing the certificate to the student.

(3) To be approved as a pre-licensing course for broker curriculum, a course shall cover one of the following topics:

(a) Federal Housing and Lending Law;

(b) Kentucky Real Estate Law and Regulation;

(c) Real Estate Finance;

(d) Real Estate Marketing;

(e) Property Management;

(f) Real Estate Investment;

(g) Real Estate Appraisal;

(h) Home Inspection;

(i) Real Estate Auction;

(j) Construction and Blueprints;

(k) Land Use Planning and Zoning;

(l) Commercial Real Estate;

(m) Real Estate Development; and

(n) Urban Planning.

(4) In addition to being specific to the course topics listed in ***subsection (3) of this section[~~(3)(a) through (n)~~]***, each pre-licensing course for broker curriculum shall include:

(a) A comprehensive review specific to the course topic of all the relevant laws necessary to run a brokerage office in accordance with the applicable Kentucky licensing laws, administrative regulations, and federal laws, if applicable, relating to real estate and the standards of practice for a broker;

(b) An extensive review of case studies; and

(c) Instruction on personnel management and leadership models.

(5) In addition to being specific to the course topics listed in ***subsection (3) of this section[~~(3)(a) through (n)~~]***, each pre-licensing course for broker curriculum shall be in either three (3) academic credit hour or six (6) academic credit hour intervals and shall not be accredited for continuing education credit.

(6) Within ten (10) days of completion of an approved broker curriculum course, the provider shall submit to the commission:

(a) An attendance roster; and

(b) A Course Evaluation Form, KREC Form 106, completed by each attendee listed on the roster.

(7) If a licensee takes a broker pre-license course with the same course number more than once, the licensee shall only receive credit for one ***(1)*** course completion.

(8) To renew approval for a broker management or broker curriculum course, an approved education provider shall submit:

(a) A completed Pre-license Course Application and Renewal Form, KREC Form 102, for each course approval is sought, at least ninety (90) days prior to the current expiration of the broker management or broker curriculum course; and

(b) A detailed abstract of changes made to the course, course materials, and other required attachments since the initial application or most recent course renewal.

(9) An education provider shall notify the commission in writing within ten (10) days of a substantive change in the information submitted on the initial or renewal application for a broker management or broker curriculum course or in any attachment thereto.

(10) Every five (5) years an approved education provider shall submit a complete Pre-license Course Application and Renewal Form, KREC Form 102, for each course for which approval is sought, at least ninety (90) days prior to the scheduled offering of a the broker management or broker curriculum course.

(11) Nothing in this section shall prevent the commission from requesting the current version of a course from an approved education provider during the five (5) year review period.

Section 8. Broker Electives.

(1) To obtain approval for a broker elective course, an approved education provider shall submit a Continuing Education and Post-License Education Course Application and Renewal Form, KREC Form 103, for each course for which approval is sought, consistent with Section 6 of this administrative regulation. The approval shall be valid for one (1) year.

(2) The content of a broker elective course shall be:

(a) An NAR designation course; or

(b) A course tailored to the supervisory functions of managing and operating a real estate brokerage company beyond the scope of what is covered in a sales associate pre-licensing course.

Section 9. Distance Education Standards for Approval.

(1) Continuing education, post-license education, and pre-license courses conducted for academic credit in an accredited college or university via interactive television shall include:

(a) Two (2) way audio and video connections between the instructor and the student; and

(b) College or university personnel stationed at each remote site to handle technology problems that may arise and to monitor attendance of students.

(c) The program shall be one that has been properly approved by the college accrediting body as fulfilling the requirements for academic credit.

(2) A course initially approved for classroom instruction shall not be offered for distance education unless additional approval consistent with this section is obtained from the commission.

(3)(a) Consistent with this administrative regulation, an approved provider shall submit:

1. a. A completed Pre-license Course Application and Renewal Form, KREC Form 102 or

b. A completed Continuing Education and Post-licensing Education Course Application and Renewal Form, KREC Form 103.

(b) In addition to the attachments required by the appropriate course application form, the course application shall include:

1. A complete copy of the program on the medium that is to be used or a link to the internet site where the course is located;

2. A copy of the final examination question bank and key for each course; and

3. The appropriate non-refundable course review fee.

(4) The course shall:

(a) Be divided into learning units, modules, or chapters to provide mastery of the material. Each unit shall contain learning objectives that are sufficient to ensure that the course will likely be mastered by the student upon completion of the material;

(b) Require quizzes at the end of each learning unit, module, or chapter to assess the student's performance before proceeding to the next learning unit, module, or chapter;

(c) Require a final examination consistent with subsection (6) of this section;

(d) Provide a method for tracking the length of time a student spends on the course; and

(e) Prohibit a student from bypassing the course materials to advance directly to the end-of-module quizzes or exercises that are included to assess the student's performance.

(5)(a) Each course shall have the approved instructor available to answer questions from students.

(b) The provider shall have reasonable oversight to monitor a student's work and electronic access in order to ensure that the student completing the work and receiving credit is the one who is enrolled in the course.

(6) For all distance education courses, the student shall pass a final exam covering the content of the course and real estate laws and administrative regulations that apply to those content areas with a score of at least seventy-five (75) percent.

(a) If the course is a continuing education or post-license education course, the final exam shall:

1. Be included as the last module of the course; and

2. Have a minimum of five ***(5)*** questions for each approved

hour of education.

(b) If the course is a pre-license education course, the final exam shall:

1. Contain a minimum of fifty (50) items for a three (3) academic credit hour course or contain a minimum of ***100[~~one-hundred (100)~~]*** items for a six (6) academic credit hour course;

a. Each course shall have an item bank from which the final examination questions shall be pulled.

b. The bank shall contain multiple choice items and have forty (40) percent more questions than required on the final examination, so that retake exams will contain unique new questions.

2. Be monitored by the approved instructor for the course or another individual designated by the instructor who is not a relative or a business associate of the student;

3. If another individual is designated to monitor the exam, the monitor shall be:

a. A certified librarian;

b. A public school administrator;

c. A College professor;

d. Other real estate instructor associated with the school offering the course; or

e. A monitor from a qualified online test monitoring service;

4. The monitor shall:

a. Sign a statement certifying that he or she is not affiliated with the student in any way;

b. Verify that the person taking the examination is the person registered for the course;

c. Observe the student taking the exam;

d. Assure that the student does not use aids of any kind;

e. Assure that a calculator is nonprogrammable;

f. Assure that limitations on the final examination are not exceeded;

g. Certify to the provider in a notarized statement that all requirements for the final examination have been met; and

h. Assure that any student's mobile device, cell phone, or camera is shut down and put away, while at the test site.

(7) Prior to awarding a student credit for a distance education course, the education provider shall require each student to complete an affidavit that includes the date of completion and the student's signature, which may be provided electronically. The affidavit shall certify that the student has personally completed all components of the course and the final exam with no academic assistance.

(8) Credit shall be denied and disciplinary action taken if it is determined that a student received academic assistance on the final exam.

(9) To obtain credit for a distance education course, a student shall complete the course within the time frame allotted by the school for pre-license courses or within the education cycle for continuing and post-license education, unless the student is completing the course to comply with an order of the commission.

(10)(a) The completion date for all courses shall be the latest of the dates upon which the student completes the final examination with a passing score of at least seventy-five (75) percent and submits the student affidavit.

(b) The student shall submit the course evaluation and student affidavit to the provider from whom the course was taken.

(11)(a) The provider shall ensure that approved instructors are available to assist students who have questions regarding:

1. The technology used in the delivery;

2. The course content; or

3. The completion requirements.

(b) A student shall not be required to call more than one (1) person to obtain answers to questions about the course.

(12) The provider shall include a detailed explanation of how the course measures, documents**,** and records the student completion of the material, and any activities or exercises required to achieve mastery of the material.

(13)(a) The provider shall obtain an evaluation from each student.

(b) An evaluation may be submitted to the provider electronically and a copy of each form shall be returned along with the attendance roster and other documents required by the commission for continuing education courses.

Section 10. Course Instructor Qualifications and Approval.

(1) A person not approved pursuant to this administrative regulation shall not teach an education course for credit.

(2) To be approved, an instructor shall have:

(a) Qualifying education or experience:

1. A bachelor's or post-graduate degree from a college or university duly accredited by a nationally recognized rating or accrediting organization, in a field directly related to the nature of the course, such as real estate, business, law, or finance**;[~~.~~]**

2. An associate degree in real estate from a college or university duly accredited by a nationally recognized rating or accrediting organization;

3. Completed five (5) consecutive years of full-time experience in the real estate related subject area that he or she is teaching; or

4. A combination of teaching, education, and full-time experience in real estate totaling five (5) years; and

(b) Sufficient and thorough knowledge of the subject area of the course he or she is teaching, familiarity of the provisions of Kentucky real estate licensing law and administrative regulations, and the importance of those provisions on the subject area of the course; and

(c)1. **Effective on January 1, 2021, have** completed a mandatory educator training course within the twelve (12) months preceding the approval or renewal as an instructor from the commission, unless one of the following exemptions apply:

a. The instructor is a national level or unique speaker and training poses an impractical burden;

b. The instructor has taken a similar course in another jurisdiction within the preceding twelve (12) months;

c. The instructor teaches two (2) or fewer courses each year; or

d. The instructor has earned a Distinguished Real Estate Instructor designation or a comparable advanced designation.

2. The mandatory educator training course shall include a minimum of three (3) fifty (50) minute blocks of instruction consisting of:

a. Classroom management principles and Generally Accepted Practices of Education;

b. Fundamentals of instruction in adult education; and

c. A review of any pertinent changes to Kentucky or federal real estate brokerage laws and administrative regulations and current real estate brokerage principles.

(3) To apply for approval, an instructor shall submit:

(a) ***An*** Instructor Application and Renewal Form, KREC Form 100;

(b) A copy of the instructor's current resume;

(c) Any information necessary to explain an answer on the application;

(d) A license certification from each jurisdiction where the instructor holds a professional license; and

(e) A certification of completion for the instructor course.

(4) Instructor approval shall last for one (1) year.

(5) To renew, an instructor shall submit the Instructor Application and Renewal Form, a certification of completion for the instructor course, and note any changes from the materials submitted in subsection (3) of this section.

(6) The commission shall maintain a roster of approved instructors who are eligible to be added to an approved course upon submission of a completed Instructor Affiliation Form, KREC Form 104.

(7) Approval of an instructor may be withdrawn, probated, or suspended by the commission for:

(a) A violation of a provision of KRS Chapter 324 or the administrative regulations promulgated thereunder;

(b) Falsification of material submitted to the commission;

(c) Failure to provide to the commission requested material;

(d) While acting as an instructor, engaging in brokerage activity with an enrolled student while present in an educational facility;

(e) Soliciting an investment from a student;

(f) Attempting to recruit a student to a real estate company while acting as an instructor;

(g) Receipt of a complaint or poor evaluation related to the

conduct of the instructor;

(h) Improper or unprofessional conduct or communication during course instruction, including comments that are clearly derogatory, not germane to the course's subject matter, or are intended to offend a particular student or group of students;

(i) Permitting a student to receive credit for a course if the licensee arrives more than ten (10) minutes after the scheduled start of the course or any break during the course; or

(j) Failure to abide by the Generally Accepted ***Principles[~~Practices~~]*** of Education or other documented deficiencies in classroom management.

Section 11. Evaluation of Instructors.

(1) The commission shall review each Course Evaluation Form, KREC Form 106, submitted.

(2) Within the commission's ***determination[~~discretion~~]***, the commission may monitor an instructor's course.

(3) The commission monitor shall submit a recommendation to the commission regarding whether the instructor shall be allowed to continue to teach courses.

(4) Based on the recommendation of the commission monitor, and the comments from the monitored class, the commission shall:

(a) Take no further action; or

(b) Take disciplinary action.

(5) If the commission issues a probationary order, the commission shall establish the length and terms of the probationary period as well as the date of any class to be monitored.

(6) At the conclusion of the probationary period, the commission shall determine if the instructor's approval shall continue.

(7) If the commission determines that instructor approval shall be suspended, the instructor shall not be allowed to teach any commission-approved education courses unless approval is reinstated.

(8) The commission shall notify the instructor and the school of its decision in writing.

(9)(a) Any instructor who has been suspended from teaching education courses may apply for reinstatement by submitting:

1. An application for approval to the commission; and

2. An explanation detailing how the applicant cured the deficiency which resulted in suspension; and

(b) After submission of the***[~~above~~]*** documents ***in paragraph (a) of this subsection*** and consideration by the commission, the commission shall approve or deny the instructor's request for reinstatement.

Section 12. Monitoring and Withdrawal of Provider Approval.

(1) An approved education provider shall ensure that all instructors shall abide by the Generally Accepted Principles of Education as adopted by the Real Estate Educators Association.

monitoring by the commission, or its designee, to evaluate the administration or operation of any approved real estate school or approved provider education course and to evaluate the performance of instructors.

(3) An approved education provider shall not:

(a) Advertise, or permit an advertisement to be made, in conjunction with the business of a principal broker or a real estate brokerage company;

(b) Discuss, induce, or promote affiliation with a principal broker or a real estate brokerage company;

(c) Submit an application or renewal that contains false, inaccurate, or misleading information;

(d) Violate the provisions of this administrative regulation as it relates to the establishment or conduct of the provider, any instructor, or any course material; ***or***

(e) Directly or indirectly attempt, or allow an official, employee, or a person on their behalf, to reconstruct the real estate licensing examination or portion of the examination.

(4) If an approved education provider's approval may be subject to withdrawal for the reasons set forth in this section, the commission shall:

(a) Give written notice to the school of the intent to withdraw approval and the reasons therefor; and

(b) Give the school an opportunity to address the notice, in writing, within thirty (30) days of the date of the notice of intent to withdraw approval.

Section 13. Records Retention.

(1) An approved education provider shall maintain accurate records on each student enrolled in a course for three (3) years.

(2) A record shall include each student's record of courses completed or attempted, academic hours awarded, final grades, and test scores, if applicable.

(3) A certificate of completion shall be:

(a) Included in the records of each student; and

(b) Delivered to each student upon completion of a course.

Section 14. Instructors to Receive Credit for Teaching.

(1) A licensee who teaches an approved continuing education course shall receive credit on an hour-for-hour basis, not to exceed three (3) hours per calendar year.

(2) To obtain continuing education credit, the instructor's name shall be added to the education attendance roster for the course.

(3) The instructor shall not receive credit more than once in a calendar year for teaching a specific course.

Section 15. Effective Date. The first provider application, course approval application, and instructor application for each provider, course, or instructor received after the effective date of this administrative regulation shall be considered an initial application for purposes of the application and renewal processes prescribed in this administrative regulation.

Section 16. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) ***"Instructor Application and Renewal Form", KREC Form 100, 07/19;***

***(b)*** "***Education*** Provider Application and Renewal Form", KREC Form 101, 07/19;

***(c)[~~(b)~~]*** "Pre-license Course Application and Renewal Form", KREC Form 102, 07/19;

***(d)[~~(c)~~]*** "Continuing and Post-license Education Course Application and Renewal Form", KREC Form 103, 07/19;

***(e) "Instructor Affiliation Form", KREC Form 104, 07/19;***

***(f)[~~(d) "Instructor Application and Renewal Form", KREC Form 100, 07/19;~~***

***~~(e)~~]*** "Provider Host Form"**,** KREC Form 105, 07/19;

***[~~(f) "Instructor Affiliation Form" KREC Form 104, 07/19~~]***;

(g) "Course Evaluation Form", KREC Form 106, 07/19; and

(h) "Generally Accepted Principles of Education", KREC Form 107, 07/19.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available from the commission's Web site: www.krec.ky.gov.[~~Section 1. (1) To apply for certification as an approved real estate school or to renew certification, a real estate school shall submit a:~~

~~(a) Completed Provider Application – Form E101 including the information required concerning curriculum, instructors, required textbooks, educational materials, and policies of the school;~~

~~(b) Copy of the license from the Kentucky Commission on Proprietary Education, if applicable;~~

~~(c) Sample schedule to outline how a course will be presented;~~

~~(d) Completed detailed Course Outline – Form E105 broken into four (4) hour increments to include teaching methods, learning objectives for the course, auxiliary aids, and materials for each course, which shall include:~~

~~1. Instructor Application – Form E100 and any additional documents required to explain a response on the application for each instructor who will teach this course, as required by 201 KAR 11:175; and~~

~~2. A copy of the written material, other than the textbook or real estate license law manual, which the instructor will use in the classroom;~~

~~(e) Sample copy of a school brochure or information sheet~~

~~promoting the school;~~

~~(f) Copy of legal documentation required to support an answer, if applicable;~~

~~(g) A sample copy of an official transcript that will be issued by the school;~~

~~(h) A copy of a contract or agreement signed by the student that outlines the class schedule, assignments or projects, examination requirements, grading system, and attendance requirements; and~~

~~(i) Other documents as established in Section 2 of this administrative regulation.~~

~~(2) An approved real estate school shall include a statement in the school application that a criminal conviction may prevent an applicant from qualifying for licensure under KRS 324.045. Failure to do so shall result in suspension of an approved school's certification until the information is included in the application.~~

~~(3) An approved real estate school shall notify the commission within ten (10) days of a material change in the information originally submitted on the application or in an attachment to the application.~~

~~(4) An Education Course Application, Form E102, shall be submitted by October 1 of each even numbered year. The approval shall be for a two (2) year period, beginning November 1.~~

~~Section 2. (1) The curriculum for a pre-license course at an approved real estate school shall: (a) Include a minimum of:~~

~~1. Three (3) academic hours per course; or~~

~~2. Fifteen (15) hours for a course related to the appraisal of property;~~

~~(b) Be conducted for a maximum of no more than nine (9) hours during a twenty-four (24) hour period;~~

~~(c) Consist of a course containing the topics listed in the Pre-license Prescribed Topics – Form E112 by the Real Estate Commission.~~

~~1. A real estate course shall be designated specifically as a real estate course by an approved or accredited real estate school that offers the course.~~

~~2. The academic content for the course shall specifically focus on real estate.~~

~~3. The course shall be for academic credit and not a continuing education unit, examination preparation or review, experiential education, or competency testing.~~

~~4. A candidate shall not submit completion of the same course or essentially the same course twice for licensure credit;~~

~~(d) Include a closed-book monitored final examination of at least:~~

~~1.a. Fifty (50) multiple choice questions for a three (3) hour academic course; or~~

~~b. 100 multiple choice questions for a six (6) hour academic course.~~

~~2. The passing score shall be seventy-five (75) percent in order to pass the course.~~

~~3. Examination questions shall cover all aspects of material covered in the course, including applicable license laws and administrative regulations.~~

~~4. Two (2) retakes of the examination shall be permitted; and~~

~~(e) Include in all real estate pre-license courses, a practicum or project applicable to the topic, that shall be completed with a passing score and averaged with the final examination and other components or assignments required in the course, as part of the student's final grade.~~

~~(2) The application for course approval shall include a copy of the final examination and answer key, an explanation and copies of the project or practicum that shall be required of students, when that assignment shall be due, and how the final grade for the course shall be calculated.~~

~~(3)(a) All primary and secondary providers offering online pre-license or other distance education courses shall be approved in accordance with the provisions established in 201 KAR 11:240.~~

~~(b) The commission shall review the content to ensure that the content meets the requirements established in this administrative regulation and in 201 KAR 11:240.~~

~~(4)(a) The application and all required attachments shall be submitted to the commission for consideration at its next regularly scheduled meeting, which is posted on the commission's Web site after calendar approval.~~

~~(b) The provider shall be notified in writing of the commission's approval or denial of the course for academic credit.~~

~~Section 3. Each real estate pre-license course completed at an out-of-state accredited institution, for which credit may be granted under this section, shall be approved or rejected pursuant to subsections (1) through (9) of this section.~~

~~(1) A course description from the school catalog, course syllabus, table of contents from text used in the course, or other summary of the course shall be provided to the commission by the applicant.~~

~~(2) The commission education director shall review the material submitted by the applicant and recommend the commission either grant or reject credit under this section at the commission's regular monthly meeting.~~

~~(3) The commission education director shall record:~~

~~(a) The name of the course;~~

~~(b) If approval was granted or rejected; and~~

~~(c) The date of approval or rejection.~~

~~(4) If a course has been previously approved by the commission under this section or if a course is substantially similar to a previously-approved course, the commission education director shall be authorized to determine course approval.~~

~~(5) In determining if a course is substantially similar to a previously-approved course, one (1) or more of the following items shall be considered:~~

~~(a) The table of contents from text used in the course;~~

~~(b) The course syllabus;~~

~~(c) Course description from the school catalog; or~~

~~(d) Other summary of the course.~~

~~(6) The commission's education director shall notify an applicant if a course is rejected for credit under this section.~~

~~(7)(a) If an applicant disagrees with the education director's decision under this section, he or she shall, within ten (10) days from the date of the education director's notification of rejection, file with the commission a written request for a commission review of the education director's decision.~~

~~(b) The request shall specifically indicate the applicant's disagreement.~~

~~(c) Failure to indicate disagreement within the ten (10) day period shall constitute waiver by the applicant and the education director's decision shall become final.~~

~~(8)(a) In addition to notifying the education director of disagreement with his or her decision, the applicant shall provide a written summary to the education director detailing why credit under this section is merited.~~

~~(b) The commission education director shall forward this summary to the commission along with his or her response to the commission for a final decision at the commission's regular monthly meeting.~~

~~(c) Failure to provide within ten (10) days a specific summary detailing why credit is merited under this section shall constitute waiver by the applicant and the education director's decision shall become final at that point;~~

~~(9)(a) If the applicant indicates disagreement with the education director's decision within ten (10) days of notification and provides a written summary detailing the disagreement within ten (10) days of notification, the commission shall consider the submissions from the applicant and the education director and reject or approve the course for credit under this section.~~

~~(b) The commission shall notify the applicant of its decision in writing.~~

~~Section 4. An approved real estate school shall not:~~

~~(1) Advertise in conjunction with the business of a broker or a brokerage firm; or~~

~~(2) Discuss, induce, or promote affiliation with a broker or brokerage firm.~~

~~Section 5. (1) An approved real estate school shall maintain accurate and permanent records on each student enrolled in a course.~~

~~(a) A permanent record shall include each student's record of courses completed or attempted, academic hours awarded, and final grades.~~

~~(b) A certificate of completion shall be:~~

~~1. Included in the permanent records of each student; and~~

~~2. Mailed to each student upon completion of a course.~~

~~(2) Records shall: (a) Be maintained for three (3) years; and~~

~~(b) Include student attendance records, final grade, and test scores.~~

~~(3) An approved real estate school shall notify the commission, in writing, within five (5) days of the beginning of a pre-license course. Notice shall include the name of the course, class location, and scheduled dates and times the class will be offered.~~

~~(4) Schools and instructors shall take appropriate steps to maintain the confidentiality of the final examinations. These steps shall include:~~

~~(a) Maintaining examinations and answer keys in a secure place accessible only to the school administrator and the instructor;~~

~~(b) Prohibiting students from retaining copies of the final examination and answer sheets; and~~

~~(c) Monitoring students continuously during examinations.~~

~~Section 6. (1) An approved real estate school shall permit an inspection and monitoring by the commission or its designee to evaluate an aspect of the administration or operation of the school or to evaluate the performance of the instructor.~~

~~(2) Monitoring may include a periodic mailing by the commission to students seeking an evaluation of his or her pre-license course and instructor.~~

~~Section 7. (1) Private school approval shall be withdrawn if the commission determines that:~~

~~(a) Information contained on the application or renewal is inaccurate or misleading;~~

~~(b) The establishment or conduct of the school is not in compliance with this administrative regulation or the instruction is so deficient as to impair the value of the course; or~~

~~(c) The school is not certified by the Kentucky Commission on Proprietary Education.~~

~~(2) If the commission has notice that a school's approval may be subject to withdrawal for the reasons set forth in subsection (1) of this section, the commission shall:~~

~~(a) Give written notice to the school of the intent to withdraw approval and the reasons therefor;~~

~~(b) Give the school an opportunity to address the notice, in writing, within thirty (30) days of the date of the notice of intent to withdraw approval; and~~

~~(c) Review the issues and the school's response.~~

~~Section 8. An effort made directly or indirectly by a school, official, employee, or a person on their behalf to reconstruct the real estate licensing examination or portion of the examination shall result in immediate revocation of school approval.~~

~~Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Instructor Application - Form E100", 05/15 edition, Kentucky Real Estate Commission;~~

~~(b) "Education Course Application", Form E102, 5/15;~~

~~(c) "Provider Application – Form E101", 05/15 edition, Kentucky Real Estate Commission;~~

~~(d) "Course Outline – Form E105", 05/15 edition, Kentucky Real Estate Commission; and~~

~~(e) "Pre-license Prescribed Topics – Form E112", 05/15 edition, Kentucky Real Estate Commission.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

LOIS ANN DISPONETT, Chair
H.E. CORDER II, Executive Director
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 15, 2019

FILED WITH LRC: October 15, 2019 at 11 a.m.

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**PUBLIC PROTECTION CABINET**
**Kentucky Real Estate Authority**
**Kentucky Real Estate Commission**
**(As Amended at ARRS, November 12, 2019)**

**201 KAR 11:190. Consumer and administrative complaints; discipline; administrative hearings[~~Rules of practice and procedure before the Kentucky Real Estate Commission~~].**

RELATES TO: KRS 324.045, 324.046, 324.150, 324.151, 324.160, 324.170, 324.200, 324.281(5)

STATUTORY AUTHORITY: KRS 324.151(1), (3), 324.160, 324.170, 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and KRS 324.282 require[~~requires~~] the commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.151(1) and (3) ***require[~~requires~~]*** the commission to establish the required forms for a complaint and answer. ***KRS 324.160 authorizes the commission to order sanctions.*** KRS 324.170(1) requires the commission to schedule and conduct an administrative hearing in accordance with the provisions of KRS Chapter 13B prior to denying an application for license, before ordering any disciplinary action***,*** or before suspending or revoking a license. This administrative regulation establishes supplemental administrative hearing procedures for matters before the commission***, the informal settlement process for entry of agreed orders,[~~and~~]*** the required forms for a complaint or ***an*** answer***,[~~and~~]*** the standards ***for[~~when~~]*** filing a sworn statement to the real estate commission***, and the supplemental provisions relating to consumer access to the commission's Research, Education, and Recovery Fund.[~~This administrative regulation is necessary to provide a settlement option after a hearing is ordered to allow opportunity for more economical and expeditious resolution of the pending matter. This administrative regulation establishes the informal settlement process for entry of agreed orders. This administrative regulation also incorporates supplemental provisions relating to consumer access to the commission's Research, Education, and Recovery Fund.~~]***

Section 1. Filing a Complaint.

1) A complaint shall:

(a) Be filed on the Sworn Statement of Complaint, KREC Form 300***;[~~.~~]***

(b) Allege a prima facie case of specific violation of KRS 324.160 by a licensee or a case of unlicensed brokerage against an unlicensed individual;

(c) State the basis of the complaint fully, including the name of the principal broker, if known***;[~~.~~]***

(d) Be notarized by a notary public; ***and***

(e) Include a copy of all the following documents relevant to the complaint or a written explanation of why the documents are unavailable:

1. Listing contract;

2. Purchase contract;

3. Seller's Disclosure ***of Property Condition*** form***, incorporated by reference in 201 KAR 11:121***;

4. Agency Consent Agreement and the Guide to Agency Relationships forms***, incorporated by reference in 201 KAR 11:121***;

5. Settlement statement; and

6. Any other documentation to support a claim or alleged violation***.[~~; and~~]***

(2) The complaint shall be filed no more than one (1) year from:

(a) Actual knowledge of the cause of action; or

(b) The time circumstances would reasonably have put the complainant on notice of the cause of action.

Section 2. Complaint Review, Answers, and Replies.

1) Upon receipt of a complaint, commission staff shall review the complaint to determine whether the complaint states a prima facie violation of KRS Chapter 324.

(2) If a supplement to the complaint is required because the original complaint was deficient, the supplement shall be filed on Sworn Supplement to Complaint, KREC Form 302 and notarized.

(3)(a) If the commission staff determine the complaint alleges a prima facie case of a specific violation of KRS 324.160, the complaint shall be served for an answer on the licensee as established in KRS 324.151(2).

(b) A responding licensee shall file a Sworn Answer to Complaint, KREC Form 301 in accordance with KRS 324.151(3).

(4) The answer shall:

(a) State an answer to the complaint;

(b) Be notarized by a notary public; and

(c) Include a copy of the following documents or a written explanation of why the documents are unavailable:

1. Listing contract;

2. Purchase contract;

3. Seller's Disclosure ***of Property Condition*** form***, incorporated by reference in 201 KAR 11:121***;

4. Agency Consent Agreement and the Guide to Agency Relationships forms***, incorporated by reference in 201 KAR 11:121***;

5. Settlement statement; and

6. Any other documentation to rebut a claim or alleged violation.

(5)(a) The complainant may file one (1) reply to the respondent's Sworn Answer to Complaint within ten (10) days of receiving the respondent's Sworn Answer to Complaint;

(b) The respondent may file one (1) reply to complainant's reply within ten (10) days of receiving the complainant's reply; and

(c) All replies shall be notarized and include any documents necessary to support or rebut an allegation or a violation.

(6)(a) For purposes of calculating filing deadlines prescribed by this administrative regulation, the commission shall follow the Kentucky Rules of Civil Procedure.

(b) A request for an extension of any filing deadline prescribed by this administrative regulation shall be made directly to the office of general counsel and ***shall be*** granted or denied. If the request is denied, the requester shall have the opportunity to appeal the decision to the commission at its next scheduled meeting.

(7) The commission shall not entertain motions with regard to pending complaints.

Section 3. Complaint Screening Committee.

1)(a) The commission chair may create at least one (1) complaint screening committee.

(b) Each complaint screening committee shall consist of no more than three (3) commissioners.

(2) The complaint screening committee shall:

(a) Review complaints, supplements, answers, and replies consistent with the Complaint Review Process Chart;

(b) Order investigation or further investigation;

(c) Review investigative reports;

(d) Determine whether the commission's Research, Education, and Recovery fund shall be at issue; and

(e) Make recommendations as to the disposition of ***the*** pending complaint to the full commission.

(3) The committee may be assisted by the commission staff and counsel.

(4)(a) Prior to the complaint screening committee's review of an investigative report, the commission's investigator shall notify the respondent that he or she may request a copy of the commission's investigation report to review and address factual matters contained in the investigation report.

(b) In the investigator's ***determination[~~sole discretion~~]***, the report and exhibits shall be redacted to protect personal and sensitive information relating to witnesses.

(c) If the respondent believes a factual discrepancy exists in the investigation report, he or she shall notify the investigator in writing within five (5) days of receiving the report for review and provide the investigator with supporting documentation to rebut the factual discrepancy, if available.

(d) The investigator shall make any changes necessary based on his or her review of the respondent's notification.

(5) The committee shall report its findings and recommendations for disposition of complaints to the full commission in the form of a motion, and the commission shall:

(a) Dismiss the complaint without an administrative hearing if the facts or evidence do not indicate a prima facie case for a violation of KRS Chapter 324; or

(b) Find a violation of a provision of KRS Chapter 324 or 201 KAR Chapter 11 and issue notice of proposed action against the licensee consistent with KRS Chapter 13B.

(6) The commission, through the complaint screening committee, may engage in informal settlement negotiations, consistent with Section 5 of this administrative regulation.

(7) A commissioner shall recuse himself or herself from any matter relating to an administrative hearing or final order that resolves a case if he or she:

(a) Performed or directed some or all of the investigation;

(b) Has a personal or business relationship with either the complainant or ***any respondent[~~the respondent(s)~~]***;

(c) Is the complainant, a respondent, or a witness;

(d) Believes that his or her impartiality may fairly be called into question; or

(e) Is advised to recuse by the office of general counsel or the executive director of the Kentucky Real Estate Authority.

(8) The commission shall notify the complainant and respondent in writing of its decision regarding the disposition of a complaint.[~~Section 1. Complaint Review and Investigation. (1) An aggrieved party shall file a Sworn Statement of Complaint against a licensed real estate sales associate or broker. The complaint shall:~~

~~(a) Allege a prima facie case of specific violation of KRS 324.160 in accordance with KRS 324.151;~~

~~(b) State the basis of the complaint fully and concisely, including the name of the broker or principal broker;~~

~~(c) Be notarized by a notary public;~~

~~(d) Include a completed damages claimed form, with a copy of each receipt, estimate, or other evidence of damages attached to the report; and~~

~~(e) Be filed within two (2) years from:~~

~~1. Actual knowledge of the cause of action; or~~

~~2. The time circumstances would reasonably have put the aggrieved party on notice of the cause of action.~~

~~(2) If the commission staff review determines the Sworn Statement of Complaint does not allege a prima facie case of a specific violation of KRS 324.160, the aggrieved party shall file a Sworn Supplement to Complaint in accordance with KRS 324.151.~~

~~(3) A respondent shall file a Sworn Answer to Complaint if a complaint is filed against him in accordance with the requirements of KRS 324.151(3). The answer shall:~~

~~(a) Identify the respondent;~~

~~(b) State his responses to the complaint;~~

~~(c) Be notarized by a notary public; and~~

~~(d) Include a copy of the following documents:~~

~~1. Listing contract;~~

~~2. Purchase contract;~~

~~3. Seller's disclosure form;~~

~~4. Agency disclosure form; and~~

~~5. Settlement statement.~~

~~(4) Upon completion of an investigation following the submission of a complaint and answer, the commission shall:~~

~~(a)1. Dismiss the case without an administrative hearing if the facts or evidence do not indicate a prima facie case for a violation of KRS Chapter 324; or~~

~~2. Schedule an administrative hearing pursuant to KRS Chapter 13B, 324.151, and 324.170; and~~

~~(b) Notify the complainant and respondent of its decision in writing. The notification shall include a brief statement explaining the commission's reasons for the decision.~~

~~Section 2. Motions. (1) A request for the commission or a hearing officer to take or refrain from taking an action shall be made by an oral or written motion.~~

~~(2) A motion shall state the basis for the motion, including a citation to or description of the legal authority in support of the requested action, if applicable.~~

~~(3) A party shall be given an opportunity to respond to a motion.~~]

Section 4[~~3~~]. Withdrawal of a Complaint. A complainant may withdraw a complaint if:

(1)(a) An answer has not been filed; and

(b) The withdrawal is made within twenty (20) days of the date the complaint was received by the respondent[~~filed~~]; or

(2)(a) There is good cause for the withdrawal; and

(b) The commission approves the withdrawal.

(3) Nothing in this ***section[~~subsection~~]*** shall prevent the commission from filing its own complaint against a licensee.

Section 5[4]. Settlement by Informal Proceedings.

1) At any time following the filing of a complaint and answer, the commission, through its legal counsel, may enter into informal settlement proceedings with a licensee for the purpose of expeditiously resolving any disciplinary matter.

(2)(a) The commission shall approve or reject all settlement proposals.

(b) Any matter to which a licensee and the commission's legal counsel have stipulated that is rejected by the commission shall not thereafter bind the parties or the commission.

(3) The commission may employ mediation as a method of resolving the matter informally.

(4) All proposed agreed orders shall be signed by the licensee and shall advise the licensee that by entering into an agreed order, the licensee expressly acknowledges that the licensee is fully and completely informed of the due process rights afforded to the licensee and that the licensee knowingly, willingly, and voluntarily agrees to waive those rights and enter into an agreed order.

Section 6. Standards for Filing a Sworn Statement. ***[~~(1)~~]*** Any licensee found to have misrepresented facts in any sworn statement shall be subject to disciplinary proceedings by the commission and the commission may seek a criminal indictment for perjury.

Section 7. Emergency Orders and Hearings.

(1) Consistent with KRS 324.150(1)(b) and KRS 13B.125, the commission may **issue an emergency order prior to conducting a[~~conduct an emergency~~]** hearing ***if[~~when~~]*** an alleged escrow account violation warrants emergency action.

(2) An escrow account violation shall warrant emergency action if:

(a) A licensee is alleged to have committed two (2) or more escrow account violations;

(b) A licensee is alleged to have committed one (1) escrow account violation in excess of $500; or

(c) A substantiated threat to the public's health, safety, or welfare exists.

**(3) An emergency order authorized pursuant to this section *[~~of this administrative regulation~~]* shall be signed by the executive director, the chair of the commission, and one (1) member of the *complaint screening[~~complaints~~]* committee. The order shall be served upon the licensee who is the subject of the emergency order pursuant to KRS 13B.125.**

**(4) An emergency order issued pursuant to this section*[~~of this administrative regulation~~]* may be served on the appropriate financial institution to order an escrow account be frozen until further orders of the commission or a court of competent jurisdiction.**

**(5) A licensee who is the subject of an emergency order issued pursuant to this section*[~~of this administrative regulation~~]* may request an emergency hearing in accordance with KRS 13B.125.**

Section 8. Recovery Fund Proceedings.

(1) ***If[~~When~~]*** the Commission determines that the recovery fund shall be at issue in an administrative hearing, the complainant shall become a party.

(2) The Commission shall not represent the complainant in the administrative hearing.

(3) The complainant shall carry the burden of proof on the issue of damages.

Section 9.[~~Consolidation and Severance. (1) A hearing officer may consolidate cases assigned to his docket upon a finding by the hearing officer that:~~

~~(a) There are:~~

~~1. Common questions of law or fact; or~~

~~2. Identical issues or witnesses; and~~

~~(b) Consolidation is appropriate.~~

~~(2) A hearing officer may sever consolidated cases or claims in an administrative action upon a finding that the requirements for consolidation established in subsection (1) of this section are not met.~~] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Sworn Statement of Complaint", KREC Form 300, 7/19 [~~3/01 edition, Kentucky Real Estate Commission~~];

(b) "Sworn Answer to Complaint", KREC Form 301, 7/19[~~7/98 edition, Kentucky Real Estate Commission~~];

(c) "Sworn Supplement to Complaint", KREC Form 302, 7/19 [~~10/00, Kentucky Real Estate Commission~~]; and

(d) "Complaint Review Process Chart", ***6/19[~~7/19~~]***.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601 [~~10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223~~], Monday through Friday, 8 a.m. to 4:30 p.m.

LOIS ANN DISPONETT, Chair
H.E. CORDER II, Executive Director
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 15, 2019

FILED WITH LRC: October 15, 2019 at 11 a.m.

CONTACT PERSON: Marc Manley, Acting General Counsel, Kentucky Real Estate Authority, phone (502) 564-7760, fax (502) 564 1538, email Marc.Manley@ky.gov.

**PUBLIC PROTECTION CABINET**
**Kentucky Real Estate Authority**
**Kentucky Real Estate Commission**
**(As Amended at ARRS, November 12, 2019)**

**201 KAR 11:210. Licensing, education, and testing requirements.**

RELATES TO: KRS 2.013, 324.010, 324.020, 324.040, 324.045(1), (2), (3), 324.046, 324.085, 324.090, 324.141, 324.160, 324.281, 324.287, 324.310, 324.330, 324.990, 28 C.F.R. 16.30-16.33

STATUTORY AUTHORITY: KRS 324.045, 324.141, 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and 324.282 require[~~authorizes~~] the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. KRS 324.040(2) requires applicants for licensure as a broker or sales associate to apply in writing on forms prepared or furnished by the Real Estate Commission. KRS 324.045(4) authorizes the commission to promulgate an administrative regulation to require a national criminal history check prior to licensure. KRS 324.141(1) ***requires[~~authorizes~~]*** the commission to promulgate administrative regulations to establish **reciprocal licensing[~~license recognition~~]** procedures that allow out-of-state actively-licensed sales associates and brokers to apply for a Kentucky license that is the same as, or equivalent to, their out-of-state license. KRS 324.090(1) requires the real estate

commission to establish an expiration and renewal date for licenses. KRS 324.310(1) requires the delivery of a sales associate's license to the commission when an association with a principal broker is terminated, and KRS ***324.310(2) authorizes[~~324.330(2) allows~~]*** a licensee to place his or her license into inactive status with the commission. KRS 324.330(1) requires notice to be given to the real estate commission when a licensee's location, firm name, surname, or affiliation changes. KRS 324.085(1) requires an actively-licensed agent, except an agent licensed prior to June 19, 1976

***and a licensee satisfying the educational requirement in KRS 324.085(2)***, to successfully complete ***twelve (12)[~~six (6)~~]*** hours of mandatory continuing education ***for the biennial license period[~~each year~~]*** as a condition of licensure renewal***, requires six (6) of the twelve (12) hours to be completed in the first year of the biennial license period,*** and requires that ***six (6)[~~three (3)~~]*** of the ***twelve (12)[~~six (6)~~]*** hours pertain to the study of real estate law. KRS 324.085(2) requires a licensee who is issued an initial sales associate license after January 1, 2016, to complete forty-eight (48) classroom or online hours of commission-approved post-license education. This administrative regulation establishes requirements for applying for initial licensure, license renewal, and **reciprocal licensing[~~license recognition~~]*;[~~and establishes~~]*** the commission's criminal background check policies for all applicants[~~standards relative to education and licensure application requirements~~]***;[~~, Additionally, this administrative regulation establishes~~]*** the procedures for a licensee to report changes to his or her contact information to the commission***;[~~and sets~~]*** the penalty for failure to comply with KRS 324.330***;[~~, Also, this administrative regulation establishes~~]*** the procedure for the delivery of a sales associate's license to the commission when affiliation with a principal broker is terminated***;[~~, This administrative regulation establishes~~]*** the requirements relating to pre-license education***;[~~,~~]*** continuing education, and post-license education and the disciplinary consequences for failing to comply with the requirements.

Section 1. Initial Sales Associate License.

(1) Prior to applying for an initial sales associate license, a prospective applicant shall***[~~:~~***

***(a)]*** complete six (6) academic credit hours, or its equivalent, of prelicensing education with either:

***(a)[~~1.~~]*** An approved pre-license education provider; or

***(b)[~~2.~~]*** An accredited institution as defined by KRS 324.010(8).

(2) An applicant for initial sales associate licensure shall submit:

(a) A national criminal history check in accordance with KRS 324.045(5) and this administrative regulation;

(b) A completed application submitted on Score Report/License Application obtained from the commission's testing provider after passing the required examination, which shall contain a recent photo of the applicant;

(c) Proof of***[~~:~~***

***~~1.~~]*** high school graduation, or its equivalent***[~~, or~~***

***~~2. Successful post-secondary completion of:~~***

***~~a. A degree program or~~***

***~~b. Twenty-eight (28) academic credit hours, or the equivalent~~]***;

(d) Proof of completion of six (6) academic credit hours, or its equivalent in qualifying prelicense education;

(e) Proof of Errors and Omissions insurance coverage compliant with KRS 324.395 and 201 KAR 11:220, if the license will be immediately active;

(f) The nonrefundable sixty (60) dollar original license fee and sixty (60) dollar recovery fund fee required by KRS 324.287(2) and (8); and

(g) A completed and signed ***[~~"~~]***Consent to Jurisdiction and Service of Process***,[~~"~~]*** KREC Form 205, if the applicant resides outside of the Commonwealth of Kentucky.

(3) An applicant may submit a paper or electronic application.

(4) Within ten (10) days of being issued a license number and ***Occupations and Professions Identification Number,*** OP ID, the licensee shall:

(a) Create an Online Services Portal account;

(b) Verify the licensee's current residential address and telephone number; and

(c) Provide one (1) valid electronic mail address.[~~In lieu of proof of high school graduation or a GED diploma, an applicant may submit an official transcript from a United States institution or from an institution outside of the United States, which indicates successful post-secondary completion of:~~

~~(1) A degree program; or~~

~~(2)Twenty-eight (28) academic semester hours or the equivalent.~~]

Section 2. Broker's License.

(1) Prior to applying for a broker's license, a prospective applicant shall:

(a) Complete not less than twenty-one (21) academic credit hours, consistent with KRS 324.046(1)(a), of education to acquire a broker's license, including a minimum of:

1. Nine (9) academic credit hours of real estate courses, which shall not include an applicant's sales associate prelicense education;

2. Three (3) academic credit hours of Broker Management; and

3. Nine (9) academic credit hours of broker elective courses, approved by the commission.

(b) A licensee shall not get duplicate course credit toward a broker's license;®

(c) A licensee shall get course credit toward his or her broker's license by completing ***National Association of Realtors®,*** NAR designation courses. Credit for the designation course shall be awarded consistent with accreditation at the time the course is completed.

(d) An applicant for a broker's license may submit a request for an education review by submitting a completed ***[~~"~~]***Broker Education Review Form***,[~~"~~]*** KREC Form 207.

(2) An applicant for a broker's license shall submit:

(a) Proof of the requisite sales associate experience as provided in KRS 324.046(1)(b) or its equivalent as provided in KRS 324.046(3) or (4);

(b) A completed application submitted on Score Report/License Application obtained from the commission's testing provider after passing the required examination;

(c) Proof of completion of the broker curriculum education real estate courses required by KRS 324.046(1)(a)***,[~~;~~]***[~~and~~] KRS 324.046(3)***,[~~;~~]*** **and 201 KAR 11:170, Section 7*;[~~,~~]***

(d) Proof of Errors and Omissions insurance coverage compliant with KRS 324.395 and 201 KAR 11:220, if the license will be immediately active, or proof of extended reporting period coverage as required by KRS 324.395 if the license will be placed into inactive status;

(e) An original copy of the applicant's national criminal history check obtained consistent with KRS 324.045(5) and this administrative regulation;

(f) A completed and signed ***[~~"~~]***Consent to Jurisdiction and Service of Process***,[~~"~~]*** KREC Form 205, if the applicant resides outside of the Commonwealth of Kentucky; and

(g) The nonrefundable sixty (60) dollar original license fee required by KRS 324.287(2).

***(3)[~~(4)~~]*** An applicant may submit a paper or electronic application.

Section 3. **Reciprocal Licensing[~~License recognition~~]**.

(1) An individual actively licensed as a real estate professional outside of Kentucky may apply for an equivalent Kentucky license.

(2) To obtain a **sales associate** license by **reciprocal licensing [~~license recognition~~]**, an individual shall:

(a) File with the commission a national criminal history check in accordance with KRS 324.045(5) and this administrative regulation;

(b) File with the commission a certification of licensure issued within the preceding ninety (90) days by the regulatory authority of **the state for which the individual seeks reciprocity[~~each state in which the individual has, at any time, held a real estate license~~]**;[**~~and~~**]

**(c) Submit proof of completion of six (6) academic credit hours or their equivalent in real estate courses from an**

**accredited institution or approved real estate school pursuant to KRS 324.046 and KRS 324.141(1)(a)*3.[(3)]*;**

**(d)[(c)]** Pass the Kentucky law portion of the licensing examination for**[either]** a sales associate's license**[or a broker's license as appropriate]**;

**(e)[(d)]** Submit a completed and signed ***[“]***Consent to Jurisdiction and Service of Process***,[“]*** KREC Form 205, if the applicant resides outside of Kentucky; and

**(f)[(e)]** The nonrefundable sixty (60) dollar original license fee and sixty (60) dollar recovery fund fee required by KRS 324.287(2) and ***(8)[(7)]***.

(3) **To obtain a broker license by reciprocal licensing an individual shall:**

**(a) File with the commission a national criminal history check in accordance with KRS 324.045(5) and this administrative regulation;**

**(b) File with the commission a certification of licensure issued within the preceding ninety (90) days by the regulatory authority of the state for which the individual seeks reciprocity;**

**(c) Submit proof of completion of twenty one (21) academic credit hours or their equivalent in real estate courses from an accredited institution or approved real estate school pursuant to KRS 324.046 and KRS 324.141(1)(a)*3.[(3)]*;**

**(d) Pass the Kentucky law portion of the licensing examination for a broker’s license;**

**(e) Submit a completed and signed *[“]*Consent to Jurisdiction and Service of Process*,[“]* KREC Form 205, if the applicant resides outside of Kentucky; and**

**(f) The nonrefundable sixty (60) dollar original license fee and sixty (60) dollar recovery fund fee required by KRS 324.287(2) and (8).**

**(4) For purposes of subsections (2)(c) and (3)(c) of this Section, "or their equivalent" shall mean any education requirements approved by the commission pursuant to a reciprocity agreement entered into between the jurisdiction from which the applicant is seeking reciprocity and the commission.**

**(5)** An applicant may submit a paper or electronic application.

**(6)[(4)]** Within ten (10) days of being issued a license number and OP ID, the licensee shall:

(a) Create an Online Services Portal account;

(b) Verify the licensee’s current residential address and telephone number; and

(c)1. Provide one (1) electronic mail address;

2. The licensee may provide additional, unique electronic mail ***addresses[address(es)]***.

Section 4. Real Estate Examination.

(1) A successful passing score on required portions of the real estate examination mandated by KRS 324.045(2) shall be valid for sixty (60) days.

(2) An applicant who fails to pass any required portion of the examination mandated by KRS 324.045(2) three (3) times shall wait at least thirty (30) calendar days from the date of ***the applicant's[their]*** third failed examination prior to retaking the examination, or the score shall be void.

Section 5. Foreign Language Diplomas or Transcripts.

(1) If an applicant submits documentation of qualifying education in a language other than English, the diploma or transcript shall:

(a) Be accurately translated by a foreign language document translation service; and

(b) Include a certification stating that the translation is true, accurate, and complete.

(2) The applicant shall provide a letter to the commission indicating that the curriculum of the proffered education is equivalent to a high school diploma or GED. The comparison shall be made by an education credential service provider with membership in the National Association of Credential Evaluation Services.

(3) If the applicant is unable to comply with the requirements of this section, the applicant shall submit proof of the receipt of a GED granted by an agency or institution within the United States.[Section 3. An applicant who successfully passes the required portions of the real estate examination shall apply for a license within sixty (60) days after the examination. A candidate who fails to apply for a license within this period shall be reexamined.]

Section 6. National Criminal History Check.

(1) Prior to taking a licensure examination, an applicant shall request a copy of the applicant's national criminal history check, which shall only be valid for ninety (90) days from the date of the record report.

(2)(a) The applicant may request a copy of his or her national criminal history check from the Federal Bureau of Investigation pursuant to the provisions of 28 C.F.R. 16.30 to 16.33 or through the Kentucky State Police for submission to the Federal Bureau of Investigation consistent with KRS 324.045(5).

(b) An applicant may submit the Criminal History Affidavit, KREC Form 209, with his or her application for licensure if:

1. The applicant is unable to obtain his or her national criminal history check from the Federal Bureau of Investigation because the applicant’s fingerprints are rejected;

2. The applicant submits proof that he or she was fingerprinted at a recognized state or local law enforcement agency;

3. The applicant submits a Kentucky Administrative Office of the Courts (AOC) Fast Check Criminal Records Report, or a similar informal background report from the jurisdiction where the applicant resides; and

4. The applicant submits proof of an alternate request for a Federal Bureau of Investigation records check by name or social security number.

(c) An issued license shall ***be*** subject to discipline if, while an applicant, the licensee:

1. Having submitted a Criminal History Affidavit, KREC Form 209, with his or her application for licensure, fails to submit the national criminal history check within ten (10) days of receiving the report; or

2. Failed to report any new criminal charges or convictions that occurred after the national criminal history check report date.

(3)(a) The commission shall investigate a national criminal history check which reveals a felony conviction within the previous ten (10) years, or a misdemeanor conviction within the previous five (5) years, and may***[, at its discretion,]*** investigate any charges or convictions revealed by the national criminal history check or any other evidence of dishonesty, untruthfulness, or bad reputation of the applicant.

(b) In the ***determination[sole discretion]*** of the chair of the commission, the commission may delegate the investigative process to the Applicant Review Committee, a subcommittee of the commission, to be comprised of no more than two (2) commissioners;

(c) The Applicant Review Committee shall operate consistent with KRS Chapter 335B.

(4) Following the completion of the investigation, the commission shall review the investigation report and shall:

(a) Order the applicant to appear before the commission for a hearing before the real estate commission or the real estate commission's authorized representative to determine whether the applicant meets the standards of KRS 324.045; or

(b) Allow the applicant to proceed with his or her licensure application without a hearing.

(5) If an authorized representative conducts the hearing, the authorized representative shall recommend to the real estate commission whether the applicant meets the standards of KRS 324.045. The real estate commission may accept the recommendation, reject the recommendation and enter a separate order, or remand to the representative for further proceedings in accordance with KRS Chapter 13B.

(6) Following the hearing, if all other licensing pre-requisites are satisfied, the real estate commission shall either approve or deny the application and notify the applicant of its decision along with a written explanation of the reasons for its decision.

(7) If the real estate commission denies the application, the real estate commission shall indicate in its order, if and when, the

applicant will be eligible to submit a subsequent licensure application.

(8) If an applicant, or a licensee without an active license, has engaged in any unlicensed brokerage activity within this Commonwealth, that person shall, prior to the issuance or reactivation of any license by the commission, submit proof that he or she has ***returned[~~disgorged~~]*** all fees earned or received as a result of the unlicensed brokerage activity, consistent with KRS 324.990(2).

Section 7. Release by Principal Broker.

(1) Upon notification from the principal broker or the affiliate licensee that an affiliate licensee has been released pursuant to KRS 324.310(1), the commission shall notify the affiliate licensee at his or her last electronic mail ***address or addresses[~~address(es)~~]*** on file at the commission that, within thirty (30) days of the date of the release notification, the licensee shall:

(a) Reaffiliate with another broker by submitting a completed ***["]***Acceptance and Release Form***["]***, KREC Form 200, or by using the licensee's online services portal; or

(b) Request that his or her license be placed into inactive status by using the licensee's online services portal or by submitting a completed ***["]***License Status and Personal Information Update Form***["]***, KREC Form 201;

(c) If the affiliate holds a broker license and was formerly a principal broker, he or she shall:

1. Affiliate with another principal broker;
2. Open a new office as principal broker; or
3. Place his or her license into inactive status.

(2) Failure to comply with the notification issued by the commission shall result in the cancellation of the licensee's license.

(3) A licensee with a cancelled license shall not engage in real estate brokerage activity during the period of cancellation.

Section 8. License Renewal.

(1)(a) Licenses shall be renewed on or before March 31 through the licensee's Online Services Portal account.

(b) A licensee who is unable to renew his or her license using his or her Online Services Portal may utilize the License Renewal Form, KREC Form 208.

(2) A cancelled license shall not be renewed until the license is reactivated and in good standing.

(3)(a) A license shall be cancelled if not renewed.

(b) A licensee with a cancelled license ***shall not engage[~~is prohibited from engaging~~]*** in real estate brokerage pursuant to KRS 324.160(2).

(4) A licensee shall file or verify with the commission at renewal a telephone number, residential address, and an electronic mail address or addresses.

Section 9. Licensing Records.

(1)(a) A licensee shall notify the commission by submitting a completed ***["]***License Status and Personal Information Update Form***["]***, KREC Form 201, or through the online services portal, of a change in the following information:

1. The licensee's legal name;
2. The licensee's nickname;
3. Any alternate or assumed name being used by the licensee;
4. The licensee's residential address;
5. The licensee's electronic mail address or addresses; or
6. The licensee's preferred direct or personal phone number.

(b) If the licensee is changing his or her legal name, he or she shall provide legal documentation supporting the changed name.

(c) Processing of the changes contemplated in ***paragraph (a) of this subsection[~~(1)(a) of this section~~]*** shall require payment of a nonrefundable ten (10) dollar change request fee required by KRS 324.287.

(d) The licensee shall submit a completed and signed ***["]***Consent to Jurisdiction and Service of Process***,["]*** KREC Form 205, if the licensee is moving to a residence outside the Commonwealth of Kentucky.

(2)(a) A licensee shall notify the commission by completing, signing, and filing with the commission the ***["]***Certification of Insurance Coverage***,["]*** KREC Form 203, or through the online services portal, of any change in private professional liability insurance coverage or extended reporting period coverage as required by KRS 324.395.

(b) This notice shall be accompanied by a nonrefundable ten (10) dollar change request fee required by KRS 324.287***(8)[~~(7)~~]***.

(3)(a) A principal broker shall notify the commission of any change of his or her primary company location, firm name, alternate or assumed name, ***doing business as[~~D/B/A(s)~~]***, branch office name, branch office address, designated ***manager or managers[~~manager(s)~~]***, escrow ***account or accounts[~~account(s)~~]***, or email ***address or addresses[~~address(es)~~]*** by completing, signing, and filing with the commission the ***["]***Company Information Update Form***["]***, KREC Form 202, or through the online services portal.

(b) This notice shall be accompanied by a nonrefundable ten (10) dollar change request fee required by KRS 324.287.

(4)(a) A principal broker shall notify the commission of a change in principal broker at an existing real estate brokerage company by submitting a completed ***["]***Company Change of Principal Broker Form***,["]*** KREC Form 204, or through the online services portal.

(b) This notice shall be accompanied by the fee required by KRS 324.287.

(5)(a) An affiliated licensee shall submit a completed ***["]***Acceptance and Release Form***["]***, KREC Form 200, to change his or her affiliation to another principal broker.

(b) This form shall be accompanied by the fee required by KRS 324.287.

(6) A licensee requesting a license history certification shall complete and submit the ***["]***License Status and Personal Information Update Form***["]***, KREC Form 201, accompanied by a nonrefundable ten (10) dollar fee for each certification requested.

(7) A licensee shall be subject to discipline consistent with the commission's authority in KRS 324.160(1) for a violation of KRS 324.160(4)(t) if the licensee fails to submit notification to the commission of any changes required by this section within ten (10) days of the change.

Section 10. Inactive Status.

(1) An active licensee who wishes to place his or her license into inactive status shall submit Form ***201[~~203~~]***, ***["]***License Status and Personal Information Update Form***["]***, or through the online services portal.

(2) All licensees placing a license into inactive status shall:

(a) Obtain extended reporting period (ERP) coverage insurance for a period of one (1) year as established by KRS 324.395(1); and

(b) Submit a completed ***["]***Certificate of Insurance Coverage***["]***, KREC Form 203, with proof of the required coverage.

(3) The coverage obtained pursuant to subsection (2) of this section shall be consistent with the minimum requirements prescribed by 201 KAR 11:220.

(4) To reactivate a license from inactive status, a licensee shall complete and submit Form ***201[~~203~~]***, ***["]***License Status and Personal Information Update Form***["]***, or through the online services portal, and comply with KRS 324.310 and complete the following education:

(a) If the licensee has not taken the Core course in four (4) years, the licensee shall complete Core; and

(b) If the licensee has been inactive during more than one (1) education cycle, the licensee shall take six (6) hours of continuing education for each education cycle he or she was inactive, **not to exceed a total of thirty (30) hours,** with three (3) hours for each year in law courses. **This *paragraph[~~subsection~~]* shall not take effect until January 1, 2021.**

(5) If the licensee is exempt from continuing education requirements pursuant to KRS 324.046(5), the licensee shall not be required to complete any continuing education to reactivate a license from inactive status.

Section 11. Mandatory Continuing Education.

(1) An active licensee, licensed by the commission on or after June 19, 1976, shall comply with the requirements of KRS

324.085(1) by attending and successfully completing six (6) hours of continuing education courses sponsored or approved by the commission each year. Three (3) of the hours of continuing education shall be in law, and three (3) of the hours of continuing education may be electives.

(a) An active licensee shall complete the continuing education requirements consistent with KRS 324.085(1) no later ***than*** December 31 of the first year in the renewal cycle. An active licensee shall receive continuing education credit for any approved course completed on or before December 31, ***if[~~so long as~~]*** the education provider has reported the licensee's course completion to the commission before 11:59 p.m. on December 31 consistent with 201 KAR 11:170, Section 6(3)***[~~for classroom courses or 201 KAR 11:170, Section 9(10) for distance education courses~~]***.

(b) An active licensee who fails to complete his or her continuing education requirement shall have his or her license cancelled and be ineligible to renew if the licensee has not completed the continuing education required by KRS 324.085(1) and this administrative regulation.

(2) An active licensee's annual mandatory continuing education requirement shall not be satisfied by the completion of a pre-license course.

(3) A candidate shall not submit completion of the same continuing education course more than once for licensure credit in the same calendar year.

(4) A licensee shall not receive credit for more than nine (9) hours of continuing education in a calendar day.

(5) A licensee shall not receive credit for a course if the licensee arrives more than ten (10) minutes after the scheduled start of the course or after the conclusion of any break during the course.

(6) An active licensee shall attend a commission-approved core course once every four (4) years, with the first four (4) year cycle beginning from the year of initial licensure. The core course shall:

(a) Satisfy the licensee's mandatory continuing education requirement for the year in which the course is taken; and

(b) Be a six (6) hour comprehensive review of the requirements of:

1. KRS Chapter 324;

2. 201 KAR Chapter 11;

3. Common and federal law relating to real estate; and

4. The standards of practice for a real estate licensee.

(7) An active licensee who fails to complete Core in a year in which the licensee is required to complete Core, even if the licensee completed other continuing education, shall be subject to the delinquency procedures set forth in Section ***13 of this administrative regulation[~~12~~]***.

Section 12. Exemptions from the Continuing Education Requirement.

(1) ***A[~~No~~]*** person licensed prior to June 19, 1976 shall ***not*** be required to complete continuing education.

(2) A **reciprocal licensing[~~license recognition~~]** broker, who has been licensed for less than three (3) months when education is due, shall not be required to attend a continuing education course during the first education cycle in which he or she is licensed in Kentucky.

(3) A **reciprocal licensing[~~license recognition~~]** sales associate shall not be required to complete continuing education during the first two (2) full education cycles of licensure in Kentucky. A **reciprocal licensing[~~license recognition~~]** sales associate shall complete the education required by KRS 324.085(2).

(4) A licensee shall not be required to comply with KRS 324.085(1) during the first two (2) full education cycles from the date of issuance of a sales associate license.

(5) A licensee whose license is inactive shall not be required to attend continuing education courses while the license remains inactive, except as provided in this administrative regulation.

Section 13. Continuing Education Compliance and Delinquency.

(1) The commission shall, for good cause shown, extend the time requirements established by KRS 324.085(1) and this administrative regulation. Good cause may include a true hardship, extensive medical issues for the licensee or the licensee's immediate relative, active military duty or service, or other good cause that clearly warrants relief.

(2)(a) The request for extension and any supporting documentation shall be received in writing on or before the last day of the month or year in which the education requirement is due, unless the hardship prevents compliance with subsection (1) ***of this section***.

(b) A license shall not be cancelled while a hardship request is pending.

(c) The commission shall review the hardship request and notify the licensee in writing of the commission's decision.

(3)(a) If a licensee fails to comply with the mandatory education requirements of this administrative regulation, the executive director or ***the executive director's[~~his~~]*** representative shall issue a delinquency notice to the licensee.

(b) If the licensee fulfilled the education requirement in the year it was required, proof shall be forwarded to the commission upon request, and the ***license[~~licensee~~]*** shall be reactivated.

(4)(a) If the licensee fails to request an extension and fails to forward proof of completion prior to the deadline, the license shall be cancelled automatically.

(b) A license cancelled for nonfulfillment of the continuing education requirements may be reactivated if the licensee enters into a written delinquency plan, pays a $1,000 administrative fine, and either:

1. Places the license into inactive status; or

2. Agrees in the delinquency plan to complete the delinquent continuing education requirements for the previous calendar year on or before April 30.

(5) A licensee who places his or her license into inactive status under the provisions of this section shall not reactivate the license until he or she has:

(a) Completed all delinquent mandatory continuing education requirements; and

(b) Satisfied the requirements of KRS 324.310.

(6) A licensee who fails to place his or her license into inactive status or file the delinquency plan immediately following the year in which continuing education requirements were not fulfilled, shall automatically have the license cancelled and shall not be eligible to renew without completing the delinquent education.

(7) If a licensee fails to complete the requirements of the delinquency plan within twenty (20) days of the agreed completion date, the commission shall issue a notice of violation to the licensee.

(8) Failure to respond to the notice of violation shall result in a default order of suspension for a period of six (6) months.

(9) If the commission suspends the license as a result of a default order or after hearing, if one is requested, the licensee shall not be allowed to activate the license unless, within ninety (90) days following expiration of the suspension, the licensee:

(a) Completes all delinquent mandatory continuing education requirements;

(b) Submits the required documents to reinstate the license; and

(c) Pays all necessary reactivation, renewal, and transfer fees.

(10) If the licensee does not reinstate the license within ninety (90) days following the completion of the suspension period, the license shall be cancelled and the licensee shall be obligated to meet the requirements for initial licensure, including retaking the examination.

(11) A license cancelled under this section shall not be reactivated until the licensee has completed all of his or her mandatory education requirements, complied with all commission orders, and submitted all other applicable licensing requirements.

(12) Failure of the executive director or his ***or her*** representative to issue a deficiency notice to the licensee shall not relieve the licensee of his or her mandatory education requirements or the penalties associated with the deficiency.

(13) A license cancelled for continuing education deficiency shall be subject to the provisions of KRS 324.160(2).

Section 14. Post-License Education Compliance and Delinquency.

(1) The time requirements established by KRS 324.085(2) and this administrative regulation shall be extended by the commission for good cause shown, such as a true hardship, extensive medical issues for the licensee or the licensee's immediate relative, active military duty or service, or other good cause that clearly warrants relief.

(2) The license of a licensee who fails to complete his or her post-licensing education on or before the licensee's deadline shall be automatically cancelled the following day.

(3) A license ***of a licensee*** cancelled for post-license education deficiency ***may not be reactivated[shall not be permitted to reactive his or her license]*** until all delinquent post-licensing education is complete.

(4) A license cancelled for post-license education deficiency shall be subject to the provisions of KRS 324.160(2).

Section 15. Death or Incapacity of a Principal Broker.

(1) Pursuant to KRS 324.425, an affiliated licensee may complete and close the existing business of a deceased or incapacitated broker for a temporary period, not to exceed six (6) months.

(2) Any affiliate requesting principal broker status pursuant to KRS 324.425 shall submit a completed ***["]***Notification of Death or Incapacity of a Licensee***["]***, KREC Form 206.

Section 16. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Acceptance and Release Form", KREC Form 200, 7/2019;

(b) "License Status and Personal Information Update Form", KREC Form 201, ***11/2019[7/2019]***;

(c) "Company Information Update Form", KREC Form 202, ***11/2019[7/2019]***;

(d) "Certification of Insurance Coverage", KREC Form 203, ***11/2019[7/2019]***;

(e) "Company Change of Principal Broker Form", KREC Form 204, 7/2019;

(f) "Consent to Jurisdiction and Service of Process", KREC Form 205, 7/2019;

(g) "Notification of Death or Incapacity of a Licensee", KREC Form 206, ***11/2019[7/2019]***;

(h) "Broker Education Review Form", KREC Form 207, 7/2019;

(i) "License Renewal Form", KREC Form 208, ***11/2019[7/2019]***; and

(j) "Criminal History Affidavit", KREC Form 209, 7/2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available from the commission's Web site: www.krec.ky.gov.

LOIS ANN DISPONETT, Chair
H.E. CORDER II, Executive Director
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 15, 2019

FILED WITH LRC: October 15, 2019 at 11 a.m.

CONTACT PERSON: Marc Manley, Acting General Counsel, Kentucky Real Estate Authority, phone (502) 564-7760, fax (502) 564-1538, email Marc.Manley@ky.gov.

**PUBLIC PROTECTION CABINET**
**Kentucky Real Estate Authority**
**Kentucky Real Estate Commission**
**(As Amended at ARRS, November 12, 2019)**

**201 KAR 11:220. Errors and omissions insurance requirements.**

RELATES TO: KRS 324.010, 324.020, 324.395

STATUTORY AUTHORITY: KRS ***324.281(5),*** 324.282, 324.395***(1),*** (4), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and 324.282 require[~~requires~~] the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 324. KRS 324.395***(1)*** requires all real estate licensees***,*** except those whose licenses are in inactive status to carry[~~(4) allows licensees the option of obtaining~~] errors and omissions insurance to cover all activities contemplated under KRS Chapter 324.[~~independently, and~~] KRS 324.395(5) requires the commission to determine the terms and conditions of mandatory errors and omissions insurance coverage. This administrative regulation sets forth the minimum terms and conditions of insurance coverage required under KRS 324.395[~~procedures and standards for obtaining insurance independently~~].

Section 1. Minimum coverage requirements.***[(1)]*** A licensee shall carry continuous errors and omissions coverage that, at a minimum includes:[~~(1) An insurance company providing real estate errors and omissions insurance for real estate licensees shall provide a signed certification to the insured licensee which shall confirm that the obligations of the insurance company meet the minimum requirements set forth in this administrative regulation.~~

~~(2) A licensee who chooses to be insured by other than the group insurance policy obtained by the commission shall file the private carrier certification of coverage with the license renewal application in accordance with KRS 324.395(6). This certification shall be available on the commission's Web site, www.krec.ky.gov, and shall be included in the yearly renewal package mailed to all principal brokers.~~

~~Section 2. The insurance for which the certification has been executed shall not be terminated, cancelled, lapsed, or nonrenewed unless the insurance company has provided the commission with prior written notice.~~

~~Section 3. The minimum requirements for the coverage contained in the insurance policy for which the certification has been executed shall provide that: (1) Coverage shall be that known as real estate agents errors and omissions insurance or real estate agents professional liability insurance.~~]

***(1)[(a)]*** A[~~(2) The~~] limit of liability[~~shall~~] not[~~be~~] less than $100,000 for any one (1) claim, excluding the cost of investigation and defense; and

***(2)[(b)]*** An annual aggregate limit of liability of not[~~, nor~~] less than $1,000,000[~~annual aggregate limit of liability~~], excluding the cost of investigation and defense.

Section 2. Firm Coverage.***[(1)]*** A principal broker who purchases[~~decides to purchase independent~~] errors and omissions "firm coverage" insurance shall have at least the following aggregate amounts:

***(1)[(a)]*** One (1) to forty (40) licensees shall carry a $1,000,000 annual aggregate; or

***(2)[(b)]*** Forty-one (41) or more licensees shall carry a $2,000,000 annual aggregate.

Section 3. Deductibles. All errors and omissions ***coverage*** or professional liability insurance policies shall have maximum deductibles, which may be separate deductibles, which shall not exceed:

(1) $2,500 for judgment or settlement***;*** and

(2) $1,000 for the cost of investigation and defense.[~~(3) The maximum deductibles, which may be separate deductibles, shall not exceed $2,500 for judgment or settlement and $1,000 for the cost of investigation and defense.~~

~~(4) Coverage shall apply for any covered claim resulting from a licensed activity that occurred subsequent to April 1, 1987, unless the claim had been made against the licensee before the present insurance policy's inception or is insured by a previous insurance policy.~~

~~Section 4. Except as provided in Section 5 of this administrative regulation, coverage shall not exclude claims~~

~~brought against the insured arising out of an act or failure to act by the insured licensee when performing a professional service for which a license is required by the Commonwealth of Kentucky under KRS 324.020.~~]

Section 4. Exclusions permitted[~~Section 5.~~] Coverage may exclude claims brought against the insured, regardless of whether the professional service involves an activity for which a license is required by the Commonwealth of Kentucky, consistent with common custom in the market.

**Section 5. Licensee certification of compliance. A licensee who chooses to obtain an insurance policy other than the group insurance policy obtained by the commission pursuant to KRS 324.395(3) shall file with the commission a Certification of Insurance Coverage, KREC Form 203, *as incorporated by reference in 201 KAR 11:210,* annually upon issuance of the initial private insurance policy or its renewal.**[~~:~~

~~(1) Arising out of a dishonest, fraudulent, criminal or malicious act, error, or omission, if committed by, at the direction of, or with the knowledge of the insured;~~

~~(2) Arising as a result of the insolvency of the insured;~~

~~(3) Brought about or contributed to by any inability or failure to pay or collect premium, escrow, or tax money;~~

~~(4) Brought about by any employee, or former employee arising out of the contract of employment with the insured and alleging breach thereof;~~

~~(5) Arising out of any injury or damage which the insured either expected or intended;~~

~~(6) Brought about by bodily injury, sickness, disease, or death of any person or physical injury to, or destruction of, or loss of use of tangible property;~~

~~(7) Arising out of libel, slander, defamation of character, false arrest or imprisonment, wrongful entry,~~ [or] ~~eviction, or other invasion of the right of private occupancy, publications or utterances in violation of an individual's right of privacy, or malicious prosecution;~~

~~(8) Arising out of services performed by the insured which are subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, as amended;~~

~~(9) Arising out of any violation of the Securities Act of 1933, 15 U.S.C. 77a, as amended or the Securities Exchange Act of 1934, 15 U.S.C. 78a, as amended or any state blue sky or securities law, or similar state or federal statutes;~~

~~(10) Arising out of the conversion, misappropriation, commingling, or defalcation of funds or other property;~~

~~(11) Brought against a real estate property manager for failure to effect or maintain adequate levels or types of insurance;~~

~~(12) Arising out of unlawful discrimination;~~

~~(13) Arising out of liability assumed by the insured under any indemnity, hold harmless, or similar provisions or agreements, except this exclusion shall not apply to liability the insured would have in the absence of these agreements;~~

~~(14)(a) Arising:~~

~~1. Out of the insured's business; and~~

~~2. By or on behalf of an investor, shareholder, or partner in any corporation, limited or general partnership, real estate trust, or venture in which the insured has or had a participating interest, directly or indirectly, in the profits or losses; or~~

~~(b) In connection with the insured's activities as an underwriter, sponsor, partner, joint or coventurer, or member in any real estate partnership, venture, or syndicate;~~

~~(15) Arising out of, relating to, or based upon the dispersal, discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acids, alkalies, toxic chemicals, liquids, gases, or other materials, irritants, contaminants, or pollutants. Pollutants shall include any solid, liquid, gaseous, thermal, biological, or radioactive substance, material, matter, toxin, irritant or contaminant, including radon, asbestos, chemicals and waste. Waste shall include materials to be recycled, reconditioned, or reclaimed;~~

~~(16) Excluded by the Nuclear Energy Liability Exclusion Endorsement (broad form) filed by the Insurance Services Office, Inc. with the Kentucky Department of Insurance and identified as form #IL 00 21 11 85;~~

~~(17)(a) Arising from the sale or property management of property developed, constructed, or owned by:~~

~~1. The insured;~~

~~2. Any firm or corporation in which the insured has a financial interest; or~~

~~3. Any firm coming under the same financial control as the insured.~~

~~(b) This exclusion shall not apply and coverage shall be extended to claims arising from the sale of real property, if all three (3) of the following conditions are met:~~

~~1. The property was acquired by the insured under a guaranteed sale listing contract;~~

~~2. The title to the property was only temporarily held by the insured during the transit period, not to exceed one (1) year, from acquisition to resale; and~~

~~3. The property is listed for sale during the entire transit period; or~~

~~(18) Arising out of the interests, operations, or activities of the insured as a mortgage banker or correspondent, escrow agent, construction manager, or property developer. An insured shall not be considered engaging in the activities of an escrow agent merely because the insured holds earnest money deposits, rental deposits, or similar items.~~]

LOIS ANN DISPONETT, Chair
H.E. CORDER II, Executive Director
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October15, 2019

FILED WITH LRC: October 15, 2019 at 11 a.m.

CONTACT PERSON: Marc Manley, Acting General Counsel, Kentucky Real Estate Authority, phone (502) 564-7760, fax (502) 564-1538, email Marc.Manley@ky.gov.

**TOURISM, ARTS AND HERITAGE CABINET**
**Department of Fish and Wildlife Resources**
**(As Amended at ARRS, November 12, 2019)**

**301 KAR 2:090. Means by which migratory game birds may be taken.**

RELATES TO: KRS 150.010, 150.025(1), 150.305(3), (4), 150.330, 150.360(2)

STATUTORY AUTHORITY: [~~KRS 13A.350,~~] 150.025(1), 150.305(3), (4), 150.360(2), 150.600, 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.305(3) and (4) authorize the department to regulate the possession of harvested migratory birds and facilitates the inspection of commercial preservation facilities. KRS 150.360(2) authorizes the department to restrict methods of taking wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes requirements for the taking of waterfowl within the frameworks established by 50 C.F.R. Parts 20 and 21[~~This administrative regulation pertains to the means by which migratory game birds, doves, woodcock and snipe, and migratory waterfowl, ducks, geese, coots, gallinules and Virginia and Sora rails, may be taken. This administrative regulation is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The methods and means listed are in compliance with, and dictated by, federal regulations promulgated by the United States Fish and Wildlife Service. The function of this administrative regulation is to provide for the prudent taking of migratory birds within reasonable limitations based upon an adequate supply~~].

Section 1. Definitions.

(1) "Baited area" means any area where shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed

whatsoever capable of luring, attracting, or enticing such birds is directly or indirectly, placed, exposed, deposited, distributed, or scattered, and such area shall remain a baited area for ten (10) days following complete removal of all such corn, wheat or other grain, salt, or other feed.

(2) "Baiting" means the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed so as to constitute for such birds a lure, attraction or enticement to, on or over any areas where hunters are attempting to take them.

Section 2. Prohibited Hunting Methods.

(1) Migratory birds on which open seasons are prescribed may be taken by any method except those prohibited in this section.[:]

(2)[~~Prohibited hunting methods.~~] Migratory game birds and migratory waterfowl ***shall[~~may~~]*** not be taken:

(a) With a trap, snare, net, crossbow, rifle, pistol, swivel gun, shotgun larger than ten (10) gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance;

(b) With a shotgun of any description capable of holding more than three (3) shells, unless it is plugged with a one (1) piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three (3) shells, except that this restriction does not apply during the light geese conservation order season;

(c) From or by means, aid, or use of a sinkbox or any other type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water;

(d) From or by means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind;

(e) From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off [~~and~~/]or the sails furled, and its progress therefrom has ceased***, except[~~; provided,~~]*** that a craft under power may be used to retrieve dead or crippled birds ***but[~~; however,~~]*** crippled birds ***shall[~~may~~]*** not be shot from such craft under power;

(f) By the use or aid of live birds as decoys;

***(g)***[although not limited to,]***[~~it shall be a violation of this paragraph for any person to take migratory waterfowl~~]*** On an area where tame or captive live ducks or geese are present, unless such birds are and have been for a period of ten (10) consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl;

***(h)[~~(g)~~]*** By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds, except that this restriction does not apply during the light geese conservation order season;

***(i)[~~(h)~~]*** By the means or aid of any motor-driven land, water, or air conveyance or any sailboat used for the purpose of or resulting in the concentration, driving, rallying, or stirring up of any migratory bird; or

***(j)[~~(i)~~]*** By the aid of baiting, or on or over any baited area, except that[~~. As used in this paragraph, "baiting" shall mean the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed so as to constitute for such birds a lure, attraction or enticement to, on or over any areas where hunters are attempting to take them; and "baited area" means any area where shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed whatsoever capable of luring, attracting, or enticing such birds is directly or indirectly, placed, exposed, deposited, distributed, or scattered; and such area shall remain a baited area for ten (10) days following complete removal of all such corn, wheat or other grain, salt, or other feed. However,~~] nothing in this paragraph shall prohibit:

1. The taking of all migratory game birds, including waterfowl, on or over standing crops, flooded standing crops, including aquatics, flooded harvested croplands, grain crops properly shocked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting; and

2. The taking of all migratory game birds, except waterfowl, on or over any lands where baiting has occurred[~~shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed has been distributed or scattered~~] as the result of:

a. Bona[~~bona~~] fide agricultural operations or procedures; or[~~, or as a result of~~]

b. Manipulation[~~manipulation~~] of a crop or other feed on the land where grown for wildlife management purposes***, provided[~~; provided,~~]*** that manipulation for wildlife management purposes does not include the distribution or scattering of grain or other feed once it has been removed from or stored on the field where grown[~~;~~

~~(j) Except from a pit or blind in Ballard County only, as prescribed in 301 KAR 2:055. This method of taking applies only to waterfowl~~].

Section 3[2]. Transporting, Importing and Exporting.

(1) Migratory game birds lawfully killed and possessed in accordance with the hunting laws and regulations of any foreign country or any state in the United States or subdivision thereof, must be imported, exported, or transported in accordance with the provisions specified in Title 50, Chapter 1, Subchapter B, Part 20 of the Code of Federal Regulations.

(2) No person shall transport within the United States any migratory game birds, except doves, unless the head or one (1) fully feathered wing remains attached to each such bird at all times while being transported from the place where taken until they have arrived at the personal abode of the possessor or a commercial preservation facility.

Section 4[3]. Tagging and Recordkeeping Requirements.

(1) No person shall put or leave any migratory game birds at any place, other than at his personal abode, or in the custody of another person for picking, cleaning, processing, shipping, transportation, or storage, including temporary storage, or for the purpose of having taxidermy services performed, unless such birds have a tag attached, signed by the hunter, stating his:

***(a)[~~1.~~]*** Address;[,]

***(b)[~~2.~~]*** The total number and species of birds;[,] and

***(c)[~~3.~~]*** The date such birds were killed.

(2) Migratory game birds being transported in any vehicle as the personal baggage of the possessor shall not be considered as being in storage or temporary storage.

(3)[~~(2)~~] No person shall receive, or have in custody, any migratory game birds belonging to another person unless such birds are tagged as required under subsection (1) of this section.

(4)[~~(3)~~] No person shall transport migratory game birds belonging to another person unless such birds are tagged as required under subsection (1) of this section.

Section 5[4]. Commercial Preservation Facilities.

(1) No commercial preservation facility shall receive or have in custody any migratory game birds unless such birds are tagged as required in Section 4[~~3~~](1) of this administrative regulation.

(2) No commercial preservation facilities shall:

(a) Receive or have in custody any migratory game birds unless accurate records are maintained showing:

1. The number of each species;

2. The date such birds were received;

3. The name and address of the person from whom such birds were received;

4. The date such birds were disposed of; and

5. The name and address of the person to whom such birds were delivered.

(b) Destroy any records required to be maintained under this section for a period of one (1) year following the last entry on the record.

(c) Prevent any person authorized to enforce this administrative regulation from entering such facilities at all reasonable hours and inspecting the records and the premises where such operations are being carried on.

Section 6[5]. Wanton Waste Law. No person shall kill or cripple any migratory game bird pursuant to this administrative regulation without making a reasonable effort to retrieve the bird and include it in his daily bag limit.

RICH STORM, Commissioner
DON PARKINSON, Secretary
APPROVED BY AGENCY: August 14, 2019
FILED WITH LRC: August 15, 2019 at 10 a.m.
CONTACT PERSON: Jessica Tyler, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, email fwpubliccomments@ky.gov.

**ENERGY AND ENVIRONMENT CABINET**
**Office of the Secretary**
**(As Amended at ARRS, November 12, 2019)**

**400 KAR 1:110. Administrative hearings relating to matters brought under KRS Chapter 350 or KRS 351.310 through 351.375.**

RELATES TO: KRS 224.10-410, 350.010, 350.028, 350.0301, ***350.0305, 350.032, 350.060,*** 350.070, ***350.085,*** 350.090, 350.093, 350.130, 350.255, 350.465, 350.990, 351.315, 351.345, 351.350, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.0301, 350.255, 350.465, 350.610, 351.315, ***351.335,*** 351.345, 351.350, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 requires the cabinet to promulgate rules and administrative regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. KRS Chapter 351 authorizes the cabinet to promulgate rules and administrative regulations pertaining to explosives and blasting operations. This administrative regulation establishes hearing, conference, notice, penalty assessment, and other procedural and due process provisions for the permanent regulatory program under KRS Chapter 350, and the hearing procedures pursuant to KRS Chapter 351.

Section 1. Definitions. (1) "Applicant" is defined by 405 KAR 7:001.

(2) "Application" is defined by 405 KAR 7:001.

(3) "Cessation order" is defined by 405 KAR 7:001.

(4) "Coal" is defined by 405 KAR 7:001.

(5) "Coal exploration" is defined by 405 KAR 7:001.

(6) "Department" is defined by KRS 351.310***(7)***.

(7) "Knowingly" is defined by 405 KAR 7:001.

(8) "Notice of noncompliance and order for remedial measures" is defined by 405 KAR 7:001.

(9) "Operations" is defined by KRS 350.010(6).

(10) "Operator" is defined by KRS 350.010(8).

(11) "Permit" is defined by 405 KAR 7:001.

(12) "Permit area" is defined by 405 KAR 7:001.

(13) "Permittee" is defined by KRS 350.010(21).

(14) "Reclamation" is defined by KRS 350.010(12).

(15) "Secretary" is defined by KRS 350.010(11).

(16) "Significant, imminent environmental harm" is defined by 405 KAR 7:001.

(17) "Surface coal mining and reclamation operations" is defined by KRS 350.010***(3)[(1)]***.

(18) "Transfer, assignment, or sale of permit rights" is defined by 405 KAR 7:001.

(19) "Willfully" and "willful violation" is defined by 405 KAR 7:001.

Section 2. Applicability. This administrative regulation shall govern the conduct by the cabinet of all administrative hearings:

(1) And conferences arising under KRS Chapter 350 relating to surface coal mining and reclamation operations and coal exploration operations, including those matters initiated by a petition for hearing filed on or before August 4, 2017; and

(2) Authorized by KRS Chapter 351 relating to explosives and blasting operations.

Section 3. Proposed Penalty Assessment and Request for Assessment Conference and Administrative Hearing. (1) Notification. The cabinet shall notify a person issued a notice of noncompliance and order for remedial measures or a cessation order in writing of the cabinet's proposed penalty assessment. The proposed penalty assessment shall be made by authorized personnel of the department.

(2) Criteria. The department, in determining the amount of the proposed penalty assessment, shall give consideration to:

(a) History of previous violations of the permittee or operator at the particular surface coal mining and reclamation operation;

(b) The seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public;

(c) Whether or not the permittee, operator, or person was negligent; and

(d) The demonstrated good faith of the permittee, operator, or person in attempting to achieve rapid compliance after notification of the violation, except that good faith consideration shall not be applicable to any violation determined not to be correctable.

(3) Service method; time.

(a) The department shall serve the notice of proposed penalty assessment along with copies of applicable worksheets, to the person to whom the notice or order was issued within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order.

(b) The department shall serve the notice of proposed penalty assessment by utilizing one (1) of the following:

1. A service method established in 400 KAR 1:090, Section 5(3) and (4); or

2. Electronic mail pursuant to KRS 350.130.

(c) Service shall be deemed effective pursuant to 400 KAR 1:090, Section 5(5) or upon delivery of the notice of proposed penalty assessment with copies of worksheets to the recipient's inbox by electronic mail as electronically communicated to the department by an electronic registered receipt.

(d) Failure to serve the proposed penalty assessment within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order shall not be grounds for dismissal of all or part of the assessment unless:

1. The person against whom the proposed penalty has been assessed proves actual and substantial prejudice as a result of the delay; and

2. The person makes a timely written objection to the delay on or before the last date to request an assessment conference under subsection (4)(b) of this section.

(4) Options of person issued notice of proposed penalty assessment.

(a) Waiver of rights to challenge proposed penalty assessment if no petition was filed challenging the fact of the violation.

1. The person shall notify the department that the person elects not to contest the proposed penalty assessment.

2. If the person did not file a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

a. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;

b. The fact of the violation is deemed admitted; and

c. The proposed penalty is due and payable within thirty (30) days after the entry of the final order.

(b) Waiver of rights to challenge penalty assessment and the person filed a petition challenging the fact of the violation.

1. The person shall notify the department that the person elects not to contest the proposed penalty assessment.

2. If the person filed a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

a. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived

all rights to an administrative hearing on the amount of the proposed assessment; and

b. The proposed penalty is due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation.

(c) Request for an assessment conference. The person shall request in writing an assessment conference within thirty (30) days:

1. Of receipt of the notice of proposed penalty assessment; or

2. From the date the notice of proposed penalty assessment is returned to the department as undeliverable, unclaimed or refused.

(d) Petition for administrative hearing.

1. The person shall contest the proposed penalty assessment or the fact of the violation by submitting a petition for an administrative hearing in accordance with Section 6 or 7 of this administrative regulation, or contest both by filing a petition for an administrative hearing in accordance with Sections 6 and 7.

2. The fact of the violation shall not be contested if it has been adjudicated by a final order of the secretary pursuant to an administrative hearing commenced under Section 7 of this administrative regulation.

(5) Failure to Request a Penalty Assessment Conference. If a person issued a proposed penalty assessment fails to request in writing an assessment conference in a timely manner as set forth in subsection (4)(c) of this section or has not filed a timely petition in accordance with Section 6 of this administrative regulation, then the cabinet shall consider the failure to request an assessment conference a waiver of the person's right to a conference. The secretary shall enter a final order pursuant to paragraph (a) or (b) of this subsection.

(a) If the person did not file a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;

2. The fact of the violation shall be deemed admitted; and

3. The proposed penalty shall be due and payable within thirty (30) days after the entry of the final order.

(b) If the person filed a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and

2. The proposed penalty shall be due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation.

Section 4. Procedures for Assessment Conference. (1) Date and location of conference; failure to timely schedule; substantial prejudice.

(a) If an assessment conference is requested, the cabinet shall schedule the assessment conference within sixty (60) days after the cabinet's receipt of the request, unless all parties agree otherwise.

(b) An assessment conference shall be held in the department's regional office of the mine site subject to the proposed penalty assessment unless the parties agree otherwise.

1. If all the parties or their counsel request to participate by telephone or other electronic means, then the conference officer may hold the assessment conference telephonically or by any other electronic means agreed to by the parties.

2. Any person who attends the assessment conference in person at the department's regional office shall have access to the telephonic conference line or the electronic means utilized during the assessment conference.

(c) Failure by the cabinet to timely schedule an assessment conference shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed makes a timely objection on or before the date of the assessment conference and proves actual and substantial prejudice as a result of the delay.

(d) The scheduling of the assessment conference shall not operate as a stay of any notice of noncompliance and order for remedial measures or cessation order.

(2) Service; public participation.

(a) The cabinet shall serve notice of the assessment conference by mail, postage prepaid[~~pursuant to 400 KAR 1:090, Section 5~~].

(b) The cabinet shall also send a copy of the notice of the assessment conference to any person who filed a report that led to the issuance of the notice of noncompliance and order for remedial measures or cessation order being contested.

(c) The cabinet shall post notice of the assessment conference at the department's regional office of the mine site subject to the proposed penalty assessment at least five (5) days before the assessment conference.

(d) Any person shall have the right to attend and participate in the assessment conference.

(3) Conference officer; requirements for administrative hearings not applicable. The office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by the requirements for administrative hearings in 401 KAR 1:090 or by the provisions of 400 KAR 1:040.

(4) Report of conference officer. The conference officer shall consider all relevant information pertaining to the proposed penalty assessment. Within thirty (30) days after the assessment conference is held, the conference officer shall issue a report recommending to the secretary to either affirm, raise, lower, or dismiss the proposed penalty assessment.

(5) Service of report; documentation. The conference officer's report shall be served by mail, postage prepaid, and shall include a worksheet if the penalty has been raised or lowered. The reasons underlying the conference officer's report shall be fully documented.

(6) Failure to attend; report to issue. If the person requesting an assessment conference fails to attend the scheduled assessment conference, the assessment officer shall within thirty (30) days of the date of the scheduled assessment conference issue a report to the secretary recommending that the proposed penalty assessment be affirmed.

(7) Statements not to be introduced at an administrative hearing. In any administrative hearing commenced under Section 6 or 7 of this administrative regulation, evidence as to statements made by a party at an assessment conference shall not be introduced by another party as evidence or to impeach a witness.

(8) Challenge to conference officer's report.

(a) Any person issued a proposed penalty assessment may file a petition requesting an administrative hearing to contest the conference officer's recommended penalty. A petition shall comply with Section 6 of this administrative regulation.

(b) The cabinet may file a petition to request under Section 5 of this administrative regulation an administrative hearing to contest the conference officer's recommended penalty.

(9) Failure to timely file a petition challenging the conference report. If a person issued a proposed penalty assessment fails to timely file a petition in accordance with Section 6 of this administrative regulation challenging the conference report, the secretary shall issue a final order pursuant to paragraph (a) or (b) of this subsection.

(a) If the person also did not file a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of the administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;

2. The fact of the violation shall be deemed admitted; and

3. The proposed penalty shall be due and payable within thirty (30) days after the entry of the final order.

(b) If the person filed a timely petition requesting an administrative hearing as to the fact of the violation pursuant to

Section 7 of the administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and

2. The proposed penalty shall be due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation.

Section 5. Administrative Hearing Initiated by the Cabinet. (1) Criteria for filing.

(a) The cabinet may initiate an administrative hearing if:

1. The cabinet has reason to believe that a violation of KRS Chapter 350 or 405 KAR Chapters 7 through 24 has occurred or is occurring;

2. A violation of a permit condition has occurred or is occurring;

3. A permittee, operator, or person has failed to:

a. Pay a civil penalty assessed by the cabinet;

b. Undertake remedial measures mandated by an order of the cabinet; or

c. Abate violations the permittee, operator, or person was determined to have committed by an order of the cabinet;

4. The provisions of KRS 350.990(9) apply;

5. The cabinet has reason to believe additional remedies should be sought or an order should be entered against a person to protect the environment or the health and safety of the public;

6. The criteria of 405 KAR 10:050, Section 3(2) or (3) apply;

7. The cabinet has determined that revocation of a license under KRS 351.345 is warranted; or

8. An explosive user or seller notified the cabinet pursuant to KRS 351.350 that they intend to challenge a citation issued under KRS 351.315 to 351.375.

(b) The cabinet may initiate an administrative hearing to contest a conference officer's recommended penalty and seek any combination of the relief set forth in subsection (2) of this section.

(c) The cabinet shall initiate an administrative hearing and shall seek revocation of the permit and forfeiture of the bond or suspension of the permit pursuant to KRS Chapter 350 if:

1. The permittee, operator, or person has willfully failed to comply with a cessation order; or

2. The criteria of 405 KAR 10:050, Section 3(1) apply.

(2) Remedies.

(a) In an administrative hearing pursuant to KRS Chapter 350 initiated by the cabinet or in a counter claim filed in response to a petition filed in accordance with Section 6, 7, 8, or 9 ***of this administrative regulation***, the cabinet may seek one (1) or a combination of the following:

1. Permit suspension or revocation;

2. Bond forfeiture;

3. Civil penalty;

4. A determination, pursuant to KRS 350.060, 350.085, and 350.130, that a person shall not be eligible to receive another permit or conduct future operations;

5. A determination, pursuant to KRS 350.990(9), that any director, officer, or agent of a corporation willfully and knowingly authorized, ordered, or carried out a violation or failed or refused to comply with any final order; or

6. Any other relief to which the cabinet may be entitled by KRS Chapter 350.

(b) In an administrative hearing pursuant to KRS Chapter 351 initiated by the cabinet, the cabinet may seek one (1) or a combination of the following:

1. Revocation of license or permit pursuant to KRS 351.345 or KRS 351.315;

2. Civil penalty pursuant to KRS 351.350; or

3. Any other relief to which the cabinet may be entitled by KRS 351.315 to 351.375.

(3) Procedure for an administrative hearing initiated by the cabinet.

(a) Filing of administrative complaint. The cabinet shall initiate an administrative hearing by filing an administrative complaint with the office incorporating the following for each claim for relief:

1. A statement of facts entitling the cabinet to administrative relief;

2. A request for specific relief;

3. A copy of any notice, order, citation, or determination upon which relief is sought; and

4. In a bond forfeiture action, the cabinet shall attach documentation to the petition that the cabinet contacted the bonding company or financial institution providing the bond, to determine if it wanted the right to perform the measures necessary to secure bond release in accordance with KRS 350.130.

(b) Answer or responsive pleading.

1. The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the administrative complaint.

2. The answer shall contain:

a.(i) A statement specifically admitting or denying the alleged facts stated in the administrative complaint or amended administrative complaint; or

(ii) If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

b. Any defense to each claim for relief; and

c. Any other matter to be considered on review.

3. Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of the defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in a responsive pleading.

4. An allegation in a pleading to which an answer or responsive pleading is not required or permitted shall be taken as denied or avoided.

5. An allegation in a pleading to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(c) Amendment.

1. An administrative complaint may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

2. The respondent shall have ten (10) days from the filing of an amended administrative complaint or the time remaining for filing an answer to the original complaint, whichever is longer, to file an answer or responsive pleading to the amended administrative complaint.

3. If the hearing officer grants a motion to amend the administrative complaint, the hearing officer shall set the time for an answer to be filed in the order granting the motion.

(4) Burden of proof.

(a) The cabinet shall have the ultimate burden of persuasion.

(b) A respondent shall have the burden of persuasion to establish an affirmative defense.

(c) A respondent claiming an exemption shall have the burden of persuasion to establish the qualification for the exemption.

(5) Default.

(a) If the person against whom the administrative complaint is filed fails to timely comply with a prehearing order of a hearing officer, the hearing officer may on his or her own initiative or upon motion, issue an order to show cause why the person should not be deemed to have waived the right to an administrative hearing and why a report and recommended order adverse to the person shall not be referred to the secretary.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

(c) If the person against whom the administrative complaint is filed fails to appear at an administrative hearing, the person shall be deemed to have waived the right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

Section 6. Administrative Hearing for Review of Proposed Assessment. (1) Who may file. Any person issued a proposed penalty assessment may file with the office a petition for an

administrative hearing to review the penalty.

(2) Filing petition; waiver.

(a) A person filing a petition for review of a proposed penalty assessment who did not make a request for a Penalty Assessment Conference pursuant to Section 4 of this administrative regulation shall file the petition in the office within thirty (30) days of:

1. Receipt of the proposed penalty assessment; or

2. The return receipt date in the department of the notice of proposed penalty assessment, if the proposed penalty assessment is returned undeliverable, unclaimed, or refused.

(b) If the person made a timely request for an assessment conference pursuant to Section 4 of this administrative regulation, the person shall file a petition for review in the office within thirty (30) days of:

1. Receipt of the conference officer's report; or

2. The return receipt date in the office of the conference officer's report, if the conference officer's report is returned undeliverable, unclaimed, or refused;

(c) The hearing officer shall not grant an extension of time for filing a petition for review of a proposed penalty assessment.

(d) If the hearing officer, upon motion or his or her own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall enter an order in accordance with Section 4(9)(a) or (b) of this administrative regulation.

(3) Content of the petition. The petition shall include:

(a) A short and plain statement indicating the reasons why the amount of the penalty is being contested;

(b) If the amount of penalty is being contested based upon a misapplication of the penalty formula, a statement indicating how the penalty formula contained in 405 KAR 7:095 was misapplied, along with a proposed penalty utilizing the penalty formula; and

(c) Identification by reference to the number for the notice of noncompliance and order for remedial measures or cessation order number.

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of that defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in an answer or responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of an amended petition or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed, which shall be set forth in the order granting the motion.

(6) Burden of proof. The cabinet shall have the burden of going forward to establish a prima facie case as to the amount of the penalty assessment and the ultimate burden of persuasion as to the amount of the penalty assessment.

(7) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer, may at his or her discretion or upon motion, issue an order to show cause why the person should not be deemed to have waived the right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with Section 4(9)(a) or (b) of this administrative regulation.

(c) If the person against whom the proposed penalty is assessed fails to appear at an administrative hearing, the person shall be deemed to have waived the right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with Section 4(9)(a) or (b) of this administrative regulation.

(8) Hearing officer report; contents. If an administrative hearing is conducted, the hearing officer shall incorporate in the report and recommended order concerning a civil penalty, findings of fact on each of the four (4) criteria set forth in 405 KAR 7:095, Section 3 and conclusions of law.

Section 7. Administrative Review of a Notice of Noncompliance and Order for Remedial Measures and a Cessation Order. (1) Who may file. A person who considers himself aggrieved by the issuance of a notice of noncompliance and order for remedial measures or cessation order by the cabinet pursuant to the provisions of KRS Chapter 350 or ***405 KAR Chapters 7 through 24 and 805 KAR Chapter 4[~~administrative regulations~~]*** may file a petition for review with the office.

(2) Time for filing.

(a) A person filing a petition for review under this section shall file in the office a petition within:

1. Thirty (30) days of the receipt of a notice of noncompliance and order for remedial measures or cessation order;

2. Thirty (30) days of receipt of notice of modification, vacation, or termination of the notice of noncompliance and order for remedial measures or cessation order;***[~~or~~]***

3. Thirty (30) days of the return receipt date in the department of the notice of noncompliance and order for remedial measures or cessation order if the notice of noncompliance and order for remedial measures or cessation order is returned as undeliverable, unclaimed, or refused***;[~~.~~]***

4. Thirty (30) days of:

a. Receipt of the proposed penalty assessment; or

b. The return receipt date in the department of the notice of proposed penalty assessment, if the proposed penalty assessment is returned undeliverable, unclaimed, or refused***; or[~~.~~]***

5. Thirty (30) days of:

a. Receipt of the penalty assessment conference officer's report; or

b. The return receipt date in the office of the penalty assessment conference officer's report, if the conference officer's report is returned undeliverable, unclaimed, or refused.

(b) The hearing officer shall not grant an extension of time for filing a petition for review.

(c) If the hearing officer, upon motion or his or her own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall dismiss a petition that is not filed in accordance with subsection (2)(a) of this section finding that the person waived the right to an administrative hearing and affirming the notice of noncompliance and order for remedial measures or cessation order.

(3) Content of the petition. A person filing a petition for review shall incorporate in the petition regarding each claim for relief:

(a) A statement of facts entitling that person to administrative relief;

(b) A request for specific relief;

(c) An explanation of each specific alleged error in the cabinet's determination;

(d) A copy of the notice of noncompliance and order for

remedial measures or cessation order sought to be reviewed; and

(e) A statement as to whether or not the person waives the opportunity for an evidentiary hearing;

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of the defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert those defenses in an answer or responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of a petition amended as a matter of right or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the time for an answer to be filed shall be set forth in the order granting the motion.

(6) Requirement to file subsequent notice of noncompliance and order for remedial measures or cessation order.

(a) Within ten (10) days of receipt, a petitioner shall file a copy of any subsequent notice of noncompliance and order for remedial measures or cessation order that modifies, vacates, or terminates the notice of noncompliance and order for remedial measures or cessation order sought to be reviewed.

(b) Within ten (10) days of receipt, a petitioner shall file a copy of any subsequent cessation order for failure to timely abate the violation that is the subject to the notice sought to be reviewed.

(c) If a petitioner desires to challenge a subsequent notice of noncompliance and order for remedial measures or cessation order, the petitioner shall file:

1. A separate petition for review in accordance with this section; or

2. A motion to amend a pending petition with the amended petition attached in accordance with this section and within the time requirements of subsection (2) of this section.

(d) A petition for review of a related notice of noncompliance and order for remedial measures or cessation order shall be subject to consolidation.

(7) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his or her discretion or upon motion, issue an order to show cause why the petitioner should not be deemed to have waived the right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order affirming the notice of noncompliance and order for remedial measures or cessation order and dismissing the petition.

(c) If the petitioner fails to appear at an administrative hearing, the person shall be deemed to have waived the right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order affirming the notice of noncompliance and order for remedial measures or cessation order and dismissing the petition.

(8) Burden of proof. In review of a notice of noncompliance and order for remedial measures or cessation order or the modification, vacation, or termination thereof under this section, the cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the notice of noncompliance and order for remedial measures or cessation order, or modification, vacation, or termination thereof. The ultimate burden of persuasion shall rest with the petitioner.

Section 8. Request for Review of Permit Determinations Pursuant to KRS Chapter 350. (1) Who may file. The permit applicant, permittee, or person having an interest that is or may be adversely affected by a permit determination of the cabinet may file a petition for review of the following:

(a) Application for a new permit;

(b) Application for a permit revision and amendment, permit renewal, and the transfer, assignment, or sale of rights granted under permit;

(c) Permit revision and amendment ordered by the cabinet, except challenges of permit revision ordered as a remedial measure in a notice of noncompliance shall be reviewed in an administrative hearing pursuant to Section 7 of this administrative regulation; and

(d) Application for a coal exploration permit.

(2) Time to file; waiver.

(a) The permit applicant, permittee, or person having an interest that is or may be adversely affected by a permit determination of the cabinet shall file a petition for review with the office within thirty (30) days from the date the permit applicant, permittee, or person had actual notice of the determination or could reasonably have had notice.

(b) If the hearing officer, upon motion or his or her own initiative, finds that the permit applicant, permittee, or person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall enter an order stating that the permit applicant, permittee, or person waived the right to an administrative hearing.

(3) Content of the petition. The petition for review shall include:

(a) A clear statement of the facts entitling the person requesting review to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's decision, including reference to the statutory and regulatory provisions allegedly violated;

(c) A request for specific relief; and

(d) A statement whether or not the person requests or waives the opportunity for an evidentiary hearing.

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of that defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in an answer or a responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing

officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of an amended petition or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed in the order granting the motion.

(6) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion of administrative review.

(7) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his or her discretion or upon motion, issue an order to show cause why the person should not be deemed to have waived the right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived the right to an administrative hearing and dismissing the petition.

(c) If the person requesting the administrative hearing fails to appear at a hearing, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived the right to an administrative hearing and dismissing the petition.

(8) Burden of proof.

(a) Petition to review application for a new permit.

1. If the permit applicant is seeking review, he or she shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that:

a. The permit application complies with the requirements of KRS Chapter 350 and ***405 KAR Chapters 7 through 24[~~administrative regulations~~]***; or

b. The permit terms or conditions are improper.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that:

a. The permit application fails to comply with the requirements of KRS Chapter 350 or ***405 KAR Chapters 7 through 24[~~the administrative regulations~~]***; or

b. The cabinet should have imposed certain terms or conditions on the permit that were not imposed.

(b) Petition to review the approval or disapproval of an application for a permit renewal.

1. A party opposing the renewal of a permit shall have the burden of going forward to establish a prima facie case; and

2. The ultimate burden of persuasion that the permit renewal application should be disapproved or that the cabinet should have imposed certain terms or conditions on the renewal permit that were not imposed.

(c) Petition to review the approval or disapproval of an application for a permit revision or amendment, or an application for the transfer, assignment, or sale of rights granted under permit.

1. If the permit applicant is seeking review, the permit applicant shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application complies with the requirements of KRS Chapter 350 and ***405 KAR Chapters 7 through 24[~~administrative regulations~~]***.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails to comply with the requirements of KRS Chapter 350 or ***405 KAR Chapters 7 through 24[~~the administrative regulations~~]***.

(d) Petition to review a permit revision or amendment ordered by the cabinet.

1.The cabinet shall have the burden of going forward to establish a prima facie case that the permit should be revised or amended; and

2. The permittee shall have the ultimate burden of persuasion that the revision or amendment is not appropriate.

(e) Petition to review a decision on an application for a coal exploration permit.

1. If the permit applicant is seeking review, he or she shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application complies with the requirements of KRS Chapter 350 and ***405 KAR Chapters 7 through 24[~~administrative regulations~~]***.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails to comply with the requirements of KRS Chapter 350 or ***405 KAR Chapters 7 through 24[~~the administrative regulations~~]***.

Section 9. Review of a Cabinet Determination. (1) Who may file. A person who considers himself or herself aggrieved by a determination of the cabinet made under KRS Chapter 350 for which an administrative hearing is not specifically provided in any other section of this administrative regulation may file a petition for review of the determination pursuant to this section.

(2) Time to file; waiver.

(a) A person filing a petition for review under this section shall file in the office a petition within thirty (30) days after the person has had actual notice of the determination complained of, or could reasonably have had notice.

(b) The hearing officer shall not grant an extension of time for filing a petition for review pursuant to this section.

(c) If the hearing officer, upon motion or his or her own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall enter an order stating that the person waived his right to an administrative hearing.

(3) Content of the petition. The petition for review shall contain:

(a) A statement of the facts entitling the person to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's determination;

(c) A copy of the written determination to be reviewed if applicable; and

(d) A request for specific relief.

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or other responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of that defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in an answer or responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of an amended petition or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed in the

order granting the motion.

(6) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion of administrative review.

(7) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his or her discretion or upon motion, issue an order to show cause why that person should not be deemed to have waived the right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived the right to an administrative hearing and dismissing the petition.

(c) If the petitioner fails to appear at an administrative hearing, the petitioner shall be deemed to have waived the right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order finding that he or she has waived the right to an administrative hearing and dismissing the petition.

(8) Burden of proof. The petitioner shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.

Section 10. Proceeding for the Suspension or Revocation of a Permit Pursuant to KRS Chapter 350 Because of a Pattern of Violations. (1) Initiation of the proceeding.

(a) A proceeding on a show cause order issued by the cabinet pursuant to KRS 350.028(4), 350.465(3)(f), and 405 KAR 12:020, Section 8, shall be initiated by the filing of a copy of the show cause order by the cabinet with the office at the same time the order is issued to the permittee.

(b) A show cause order shall set forth:

1. A list of the unwarranted or willful violations that contribute to a pattern of violations;

2. A copy of each order or notice that contains the violations listed as contributing to a pattern of violations;

3. The basis for determining the existence of a pattern of violations; and

4. A recommendation whether or not the permit should be suspended or revoked, including the length and terms of a suspension.

(2) Answer. The permittee shall have thirty (30) days from service of the show cause order within which to file an answer with the office, which shall state:

(a) The reasons in detail why a pattern of violations, as established in 405 KAR 12:020, Section 8, does not exist or has not existed including all reasons for contesting:

1. The fact of the violations alleged by the cabinet as constituting a pattern of violations;

2. The willfulness of the violations; or

3. Whether or not the violations were caused by the unwarranted failure of the permittee;

(b) Mitigating factors the permittee believes exist in determining the terms of the revocation or the length and terms of the suspension;

(c) Other alleged relevant facts; and

(d) Whether or not an evidentiary hearing on the show cause order is desired.

(3) Burden of proof. In a show cause proceeding, the cabinet shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.

(4) Determination by the hearing officer.

(a) Upon a determination by the hearing officer pursuant to 405 KAR 12:020, Section 8, that a pattern of violations exists or has existed, the hearing officer shall recommend the permit either be suspended or revoked and the permittee be directed to complete necessary remedial measures and reclamation operations. In making the recommendation, the hearing officer need not find that all the violations listed in the show cause order occurred, but only that sufficient violations occurred to establish a pattern.

(b) If the permit is suspended, the hearing officer may recommend preconditions to be satisfied prior to the suspension being lifted.

(5) Default. If the permittee fails to timely file an answer or appear at the administrative hearing, the permittee shall be deemed to have waived the right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order containing the following:

(a) That each violation listed in the show cause order occurred;

(b) That the violations were caused by the permittee's unwarranted failure or were willfully caused;

(c) That a pattern of violations exists; and

(d) That the permit shall be suspended or revoked in accordance with the recommendation contained in the show cause order.

Section 11. Temporary Relief. (1) Temporary relief available. Except as established in subsection (2) of this section and pending the completion of the investigation and hearing provided for in this administrative regulation, a hearing officer may, subject to review by the secretary, grant temporary relief from:

(a) Notice of noncompliance and order for remedial measures or a cessation order issued pursuant to KRS Chapter 350 or ***405 KAR Chapters 7 through 24 or 805 KAR Chapter 4[~~administrative regulations~~]***;

(b) A permit or bond release decision of the cabinet; or

(c) Any action taken by the cabinet pursuant to KRS Chapter 351.

(2) Temporary relief not available. A hearing officer shall not grant temporary relief for:

(a) The issuance of a permit if the cabinet made a determination to deny a permit in whole or in part; or

(b) The release of a bond if the cabinet made a determination to deny a bond release request.

(3) A hearing officer shall grant or deny temporary relief from a cessation order issued pursuant to KRS 350.130(1) or (4), or from a bond release decision within five (5) working days of receipt by the office of a temporary relief request, unless waived by the petitioner.

(4) Contents of the petition. A person shall file a written petition for relief with the office. The petition shall contain:

(a) The permit number, the name of the permittee, the date and number of the notice of noncompliance and order for remedial measures or cessation order from which relief is requested, if applicable, and the name and telephone number of the petitioner;

(b) A detailed statement setting forth reasons why relief should be granted;

(c) Facts supporting a substantial likelihood that the person requesting the relief will prevail on the merits of the final determination of the proceeding;

(d) A statement that the relief sought will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources;

(e) If the petition relates to a cessation order issued pursuant to KRS 350.130(1) or (4) or a decision to release a bond, a statement of whether or not the person waives the requirement for the hearing officer to grant or deny the request for temporary relief within five (5) working days of receipt of the petition by the office; and

(f) A statement of the specific relief requested.

(5) Hearing process.

(a) In addition to the service requirements of 400 KAR 1:090, Section 5, the petitioner shall serve other parties with a copy of the petition simultaneously with the filing of the petition in the office. If service is accomplished by mail, the petitioner shall inform the other parties by telephone at the time of mailing that a petition is being filed in the office and the contents of the petition.

(b) The representative of the cabinet and any other party may indicate their objection to the application by communicating the objection to the hearing officer and the petitioner by telephone. Ex parte communication as to the merits of the proceeding shall not be conducted with the hearing officer. The representative of cabinet and any other party may simultaneously reduce their objections to writing. Written objections shall be immediately filed with the office and immediately served upon the petitioner.

(c) Scheduling a hearing.

1. Upon receipt of communication that there is an objection to the petition, the hearing officer shall immediately order a location, time, and date for the administrative hearing by communicating the

information to the cabinet, any other party, and the petitioner by telephone.

2. The hearing officer shall reduce the communication to writing in the form of a memorandum to the file.

3. The administrative hearing on the request for temporary relief shall be held in the locality of the permit area, or at any other location acceptable to the cabinet, the petitioner, and any other person named in the action.

4. If the petitioner did not waive the requirement for the hearing officer to grant or deny temporary relief within five (5) working days of the office's receipt of the petition for temporary relief as set forth in subsections (3) and (4)(e) of this section, the hearing officer shall schedule the administrative hearing within (5) five days of the office's receipt of the petition for temporary relief.

(d) If an evidentiary hearing is held the hearing officer may require the parties to submit proposed findings of fact and conclusions of law to be considered at the evidentiary hearing, which may be orally supplemented on the record at the hearing.

(e) If at any time, the petitioner requests a delay or acts in a manner so as to frustrate the expeditious nature of the proceeding or fails to supply the information required by the hearing officer, the action shall constitute a waiver of the five (5) day requirement in subsection (3) of this section.

(6) Standard of review. A hearing officer may grant temporary relief if:

(a) The person requesting relief shows that there is substantial likelihood that the findings on the merits in an administrative hearing conducted by the cabinet will be favorable to the person; and

(b) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(7) Timing of hearing officer's determination.

(a) A hearing officer shall grant or deny relief expeditiously.

(b) If the petitioner did not waive the requirement for a hearing officer to grant or deny the request for temporary relief within five (5) days of the office's receipt of the petition as required in subsections (3) and (4)(e) of this section, the hearing officer shall either:

1. Orally rule on the request for temporary relief at the conclusion of the hearing stating the reasons for the decision and issue a written decision stating the reasons for the finding within three (3) working days; or

2. Within twenty-four (24) hours of completion of the administrative hearing issue a written decision stating the reasons for the finding.

(c) If the petitioner waived the requirement for a hearing officer to grant or deny the request for temporary relief within five (5) days of the office's receipt of the petition in accordance with subsections (3) and (4)(e) of this section, or the petitioner did not request temporary relief from a cessation order or a bond release hearing, then hearing officer shall either:

1. Orally rule on the request for temporary relief at the conclusion of the hearing stating the reasons for the decision and issue a written decision stating the reasons for the finding within twenty (20) working days; or

2. Within fifteen (15) days of completion of the administrative hearing issue a written decision stating the reasons for the finding.

Section 12. Petition for Recovery of Costs and Expenses. (1) Who may file and time to file.

(a) A person may file a petition for an award of costs and expenses, including attorneys' fees reasonably incurred, as a result of the person's participation in a proceeding held pursuant to this administrative regulation for an action brought pursuant to KRS Chapter 350 that results in an order of the secretary.

(b) A person shall file, with the cabinet within forty-five (45) days of the date of entry of the final order, a petition for an award of costs and expenses, including attorneys' fees.

(c) Failure of a person to timely file the petition shall constitute a waiver of the person's right to an award.

(2) Content of the petition. A person shall include in the petition filed under this section the name of the party from whom costs and expenses are sought and the following:

(a) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;

(b) Receipts or other evidence of the costs and expenses; and

(c) If attorneys' fees are claimed, evidence concerning:

1. The hours expended on the case;

2.The customary commercial rate of payment for the services in the area; and

3. The experience, reputation, and ability of the individual or individuals performing the services.

(3) Answer.

(a) The respondent shall file with the office within thirty (30) days from service of the petition an answer or other responsive pleading.

(b) The answer shall contain:

1.a. A statement specifically admitting or denying the facts stated in the petition or amended petition; or

b. If the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and it shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of that defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in a responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(4) Criteria for awarding of costs.

(a) Appropriate costs and expenses including attorneys' fees may be awarded to a person from the permittee, if:

1. The person initiated an administrative proceeding reviewing an enforcement action, and a Secretary's Order was issued finding that, on or after May 18, 1982:

a. A notice of noncompliance and order for remedial measures or a cessation order was properly issued for violations of KRS Chapter 350, KAR Title 405 or a permit condition; or

b. An imminent hazard existed; or

2. The person participated in an administrative proceeding reviewing an enforcement action, and a Secretary's Order was issued finding that, on or after May 18, 1982:

a. A notice of noncompliance and order for remedial measures or a cessation order was properly issued for violations of KRS Chapter 350, KAR Title 405, or a permit condition; or

b. An imminent hazard existed; and

c. The hearing officer finds and the secretary concurs that the person made a substantial contribution to the full and fair determination of the issues.

(b) Appropriate costs and expenses including attorneys' fees may be awarded to a person other than a permittee or his representative from the cabinet, if:

1. The person initiated or participated in any proceeding under KRS Chapter 350; and

2. The hearing officer finds and the secretary concurs that the person made a substantial contribution to a full and fair determination of the issues.

(c) Appropriate costs and expenses including attorneys' fees may be awarded to a permittee from the cabinet if the permittee demonstrates that the cabinet initiated an administrative hearing or issued a notice of noncompliance and order for remedial measures or a cessation order:

1. In bad faith; and

2. For the purpose of harassing or embarrassing the permittee.

(d) Appropriate costs and expenses including attorneys' fees may be awarded to a permittee from a person if the permittee demonstrates that the person initiated an administrative hearing under this administrative regulation or participated in an administrative hearing or conference:

1. In bad faith; and

2. For the purpose of harassing or embarrassing the permittee.

(e) Appropriate costs and expenses including attorneys' fees may be awarded to the cabinet from a person if the cabinet

demonstrates that:

1. A person applied for review pursuant to this administrative regulation in bad faith and for the purpose of harassing or embarrassing the cabinet or the Commonwealth; or

2. A party participated in an administrative hearing or conference in bad faith and for the purpose of harassing or embarrassing the cabinet or the Commonwealth.

(5) An award under this section may include reimbursement for costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred.

Section 13. Location of an Administrative Hearing. (1) An administrative hearing conducted in accordance with this administrative regulation shall be held at the location designated by the hearing officer unless a written request for a hearing at or close to the mine site is submitted with the initiating document or an answer.

(2) The department's regional office for the mine site shall be deemed reasonably close, unless a closer location is requested by a party to the case and agreed to by the hearing officer.

(3) An administrative hearing pursuant to KRS Chapter 351.315 to 351.375 shall be held in Frankfort at the location designated by the hearing officer.

Section 14. Judicial Review, Effect, and Subsequent Proceeding. (1) Judicial review. Judicial review may be taken from a final order of the secretary to the appropriate circuit court of competent jurisdiction in accordance with KRS 350.032 or 350.0305, as applicable.

(2) Effect of final order pending judicial review. The commencement of a proceeding for judicial review of a final order of the secretary shall not operate as a stay of a final order, unless specifically ordered by the court of competent jurisdiction..

(3) Remand from a court.

(a) If a matter is remanded from a court for a further proceeding, and to the extent the court's directive and time limitations will permit, each party shall be allowed an opportunity to submit to the hearing officer, a report recommending a procedure to be followed in order to comply with the court's order.

(b) The hearing officer shall review each report and enter a special order governing the handling of the matter remanded to it for further proceedings by a court.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: August 13, 2019

FILED WITH LRC: August 13, 2019 at 3 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov

**ENERGY AND ENVIRONMENT CABINET**
**Department for Environmental Protection**
**Division of Water**
**(As Amended at ARRS, November 12, 2019)**

**401 KAR 10:030. Antidegradation policy implementation methodology.**

RELATES TO: KRS 146.200 through 146.360[~~146.200-146.360~~], 146.410 through 146.535[~~146.410-146.535~~], 146.550 through 146.570[~~146.550-146.570~~], 146.600 through 146.619[~~146.600-146.619~~], 146.990, 176.430, 224.1-010, 224.1-400, 224.16-050, 224.16-070, 224.70-100 through 224.70-140[~~224.70-100-224.70-140~~], 224.71-100 through 224.71-145[~~224.71-100-224.71-145~~], 224.73-100 through 224.73-120[~~224.73-100-224.73-120~~], 30 U.S.C. 1201 -1328

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. 130, 131, 16 U.S.C. 1271 through 1287[~~1271-1287~~], 1531 through 1544[~~1531-1544~~], 33 U.S.C. 1311, 1313, 1314, 1315, 1316, 1341, 1342, 1344

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. KRS 224.70-100 authorizes the policy of the commonwealth to conserve its waters for legitimate uses, safeguard from pollution the uncontaminated waters of the commonwealth, prevent the creation of any new pollution in the waters of the commonwealth, and abate any existing pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes a methodology to implement the antidegradation policy contained in 401 KAR 10:029 by establishing procedures to control water pollution in waters affected by that policy.

Section 1. Categorization and Implementation. The antidegradation procedures established in this administrative regulation shall not preempt the power or authority of a local government to provide by ordinance for a higher level of protection through antidegradation implementation for a discharger located within that local government's jurisdiction to a surface water of the commonwealth. The procedures established in this section shall govern implementation of the antidegradation policy of 401 KAR 10:029, Section 1, for a point source discharge. Surface waters shall be placed into one (1) of four (4) categories listed in this section and each category shall have a corresponding implementation procedure. (1) Outstanding national resource water. Surface waters of the commonwealth categorized as outstanding national resource waters are listed in Table 1 of this subsection.

Table 1 SURFACE WATERS CATEGORIZED AS OUTSTANDING NATIONAL RESOURCE WATER (ONRW)

| Waterbody and Receiving Water | Boundary Description | Latitude, Longitude (Downstream/ Upstream; Decimal Degrees) | County |
|---|---|---|---|
| Big South Fork Cumberland River of Lake Cumberland (Cumberland River) | Wild River Boundary at Blue Heron to Tennessee State Line | 36.66769, -84.54570/ 36.59880, -84.60518 | McCreary |
| Marsh Creek of Cumberland River | Mouth to Laurel Creek | 36.77776, -84.34903/ 36.73182, -84.37118 | McCreary |
| Marsh Creek of Cumberland River* | Laurel Creek to Ford Crossing at CR-1060 East Kidd School Road and CR-1110 Kidd School Road | 36.73182, -84.37118/ 36.69964, -84.34471 | McCreary |
| Red River of Kentucky River | School House Branch to KY-746 | 37.84422, -83.67583/ 37.79871, -83.48947 | Menifee, Powell, Wolfe |
| Reelfoot Lake | Surface Waters Within the National Wildlife Refuge Proclamation Boundary in Kentucky | Not Applicable | Fulton |
| Rock Creek of Big South Fork Cumberland River* | CR-1236 Rock Creek Road to Tennessee State Line | 36.70306, -84.59619/ 36.60241, -84.73999 | McCreary |

| | | | |
|---|---|---|---|
| Rockcastle River of Lake Cumberland | Lower End of The Narrows (0.25 River Miles Upstream of Cane Creek) to KY-1956 Billows Road | 37.03017, -84.30832/ 37.17136, -84.29679 | Laurel, Pulaski, Rockcastle |
| Underground River System | Within Mammoth Cave National Park | Not Applicable | Edmonson, Hart, Barren |
| War Fork of Station Camp Creek | Basin Including all Tributaries from Mouth to to Steer Fork | 37.53264, -83.90929/ 37.45467, -83.92699 | Jackson |
| *Waterbodies in the cabinet's reference reach network. | | | |

~~Table 1~~
~~SURFACE WATERS CATEGORIZED AS OUTSTANDING NATIONAL RESOURCE WATER~~

| ~~Stream~~ | ~~Segment~~ | ~~River Miles~~ | ~~County~~ |
|---|---|---|---|
| ~~Red River~~ | ~~Upstream to Island off SR 1067 to Downstream Wild River Boundary at SR 746~~ | ~~49.2 to 68.6~~ | ~~Menifee/Wolfe~~ |
| ~~Underground River System~~ | ~~Within Mammoth Cave National Park Boundary~~ | | ~~Edmonson/ Hart/Barren~~ |
| ~~Big South Fork Cumberland River~~ | ~~Downstream Wild River Boundary to Tennessee State line~~ | ~~44.3 to 54.8~~ | ~~McCreary~~ |
| ~~Surface Waters within Reelfoot Lake National Wildlife Refuge~~ | ~~Reelfoot Lake National Wildlife Refuge Proclamation Boundary in Kentucky~~ | ~~2040 Acres~~ | ~~Fulton~~ |
| ~~War Fork Station Camp Creek~~ | ~~Basin above South Fork of Station Camp Creek to Steer Fork~~ | ~~0.0 to 13.8~~ | ~~Jackson~~ |
| ~~Marsh Creek~~ | ~~Mouth to 1.9 miles upstream of Kentucky 478~~ | ~~0.0 to 15.0~~ | ~~McCreary~~ |
| ~~Rock Creek~~ | ~~State border to White Oak Creek~~ | ~~4.1 to 21.9~~ | ~~McCreary~~ |
| ~~Rockcastle River~~ | ~~Lower end of Narrows to 0.2 miles downstream of Kentucky 80 bridge~~ | ~~8.95 to 22.4~~ | ~~Laurel/Pulaski~~ |

(a) Categorization criteria. A surface water shall be categorized as an outstanding national resource water if:

1. The surface water meets, at a minimum, the requirements for an outstanding state resource water as provided in 401 KAR 10:031, Section 8; and

2. The surface water demonstrates national ecological or recreational significance.

(b) Implementation procedure.

1. Water quality shall be maintained and protected in an outstanding national resource water.

2. A new discharger or expanded discharge that may result in permanent or long-term changes in water quality shall be prohibited.

3. The cabinet may approve temporary or short-term changes in water quality if the changes to the outstanding national resource water do not have a demonstrable impact on the ability of the water to support the designated uses.

(2) Exceptional water. Surface waters of the commonwealth categorized as an exceptional water are listed in Table 2 of this subsection.

Table 2 SURFACE WATERS CATEGORIZED AS EXCEPTIONAL WATER

| Waterbody and Receiving Water | Boundary Description | Latitude, Longitude (Downstream/ Upstream; Decimal Degrees) | County |
|---|---|---|---|
| BIG SANDY RIVER BASIN | | | |
| Hobbs Fork of Pigeonroost Fork* | Mouth to Headwaters | 37.70738, -82.43272/ Headwaters | Martin |
| Lower Pigeon Branch of Elkhorn Creek* | Left Fork Lower Pigeon Branch to Headwaters | 37.24194, -82.48681/ Headwaters | Pike |
| Russell Fork of Levisa Fork* | Upstream End of Clinchfield Railroad Yard (0.6 RM Upstream of Big Island Branch) to Virginia State Line | 37.29283, -82.32741/ 37.29579, -82.31462 | Pike |
| Thompson Fork of Souders Branch* | Mouth to Headwaters | 37.68474, -82.66775/ Headwaters | Floyd |
| Toms Branch of Elkhorn Creek* | Mouth to Headwaters | 37.26119, -82.45249/ Headwaters | Pike |
| Unnamed Tributary of Hobbs Fork of Pigeonroost Fork* | Mouth to Headwaters | 37.68319, -82.40511/ Headwaters | Martin |
| Unnamed Tributary of Open Fork Paint Creek of Paintsville Lake (Paint Creek) | Mouth to Headwaters | 37.97373, -83.05614/ Headwaters | Morgan |
| GREEN RIVER BASIN | | | |
| Beaverdam Creek of Green River* | Mouth to Headwaters | 37.19637, -86.27598/ Headwaters | Edmonson |
| Big Brush Creek of Green River | Brush Creek to Poplar Grove Branch | 37.38472, -85.59302/ 37.42787, -85.57944 | Green |
| Brushy Pond Creek of Caney Creek | Above Pond to Headwaters | 37.40290, -86.59473/ Headwaters | Butler, Grayson |
| Cane Run of Nolin River Lake (Nolin River)* | Nolin River Lake Backwaters to Headwaters | 37.33240, -86.07132/ Headwaters | Hart |

| | | | |
|---|---|---|---|
| Caney Fork of Peter Creek* | Mouth to Headwaters | 36.84608, -85.97090/ Headwaters | Barren |
| Clifty Creek of Rough River* | Barton Run to Western Kentucky Parkway | 37.54800, -86.23505/ 37.51366, -86.15115 | Grayson |
| Clifty Creek of Wolf Lick Creek* | Little Clifty Creek to Sulphur Lick | 36.99759, -87.05518/ 36.98189, -87.12934 | Todd |
| Dismal Creek of Nolin River | Mouth to Headwaters | 37.27478, -86.24986/ Headwaters | Edmonson |
| East Fork Little Barren River of Little Barren River* | Leatherwood Creek to Flat Rock Creek | 37.00149, -85.52277/ 36.98390, -85.52892 | Metcalfe |
| Elk Lick Creek of Wolf Lick Creek* | Duck Lick Creek to Barren Fork and Edger Creek | 36.96003, -86.98838/ 36.91651, -86.97280 | Logan |
| Ellis Fork of Damron Creek* | Mouth to Headwaters | 37.15744, -85.06621/ Headwaters | Adair, Russell |
| Falling Timber Creek of Skaggs Creek* | Land Use Change (0.1 River Miles Upstream of Taylor Branch) to Headwaters | 36.93680, -85.74424/ Headwaters | Metcalfe |
| Fiddlers Creek of North Fork Rough River* | Mouth to Headwaters | 37.70782, -86.34660/ Headwaters | Breckinridge |
| Forbes Creek of Buck Creek* | Mouth to Unnamed Tributary (0.3 River Miles Downstream of CR-1021 Owen West Road) | 36.98832, -87.32847/ 36.95495, -87.34872 | Christian |
| Gasper River of Barren River* | Clear Fork Creek to Wiggington Creek | 36.98618, -86.63216/ 36.91698, -86.74175 | Logan, Warren |
| Goose Creek of Green River* | Mouth to Little Goose Creek | 37.20311, -85.01074/ 37.11575, -84.99617 | Casey, Russell |
| Green River of Ohio River | Western Mammoth Cave National Park Boundary to to Lynn Camp Creek | 37.21698, -86.26334/ 37.31974, -85.71529 | Edmonson, Hart |
| Halls Creek of Rough River* | Unnamed Tributary (0.2 River Miles Upstream of CR-1131 Halls Creek Road) to Headwaters | 37.49338, -86.76189/ Headwaters | Ohio |
| Lick Creek of West Fork Drakes Creek* | Mouth to Headwaters | 36.80165, -86.49463/ Headwaters | Simpson |
| Linders Creek of Rough River* | Mouth to Sutzer Creek | 37.63677, -86.20180/ 37.63368, -86.14513 | Hardin |
| Little Beaverdam Creek of Green River* | Mouth to KY-743 Boiling Springs Road | 37.17474, -86.34748/ 37.09866, -86.31160 | Edmonson, Warren |
| Little Meeting Creek of Meeting Creek | Mouth to Loss of Riparian Buffer (near Unnamed Tributary) | 37.58031, -86.22664/ 37.59732, -86.21150 | Hardin |
| Little Short Creek of Rough River* | Mouth to Headwaters | 37.55200, -86.57632/ Headwaters | Grayson |
| Lynn Camp Creek of Green River* | Mouth to Lindy Creek | 37.31994, -85.71503/ 37.39027, -85.70372 | Hart |
| McFarland Creek of West Fork Pond River* | Grays Branch to Unnamed Tributary | 37.13299, -87.38653/ 37.11248, -87.40630 | Christian |
| Meeting Creek of Rough River* | Little Meeting Creek to Petty Branch | 37.58021, -86.22663/ 37.56328, -86.15925 | Grayson, Hardin |
| Muddy Creek of Rough River* | Land Use Change (1.2 River Miles Upstream of CR-1125 Mt Pleasant Road) to Headwaters | 37.42276, -86.73440/ Headwaters | Ohio |
| North Fork Rough River of Rough River Lake* | Buffalo Creek to Reservoir Dam | 37.70023, -86.38206/ 37.71212, -86.32604 | Breckinridge |
| Nosey Creek of Nolin River | Mouth to Dry Run | 37.45730, -86.06752/ 37.46694, -86.08128 | Grayson |
| Peter Creek of Barren River* | Caney Fork to Dry Fork | 36.84608, -85.97090/ 36.80042, -85.90772 | Barren |
| Pond Run of Rough River* | Land Use Change (0.2 River Miles Downstream of CR-1503 White Road ) to Headwaters | 37.57381, -86.60506/ Headwaters | Breckinridge, Ohio |
| Puncheon Creek of Figure Eight Branch | Mouth to Tennessee State Line | 36.67503, -85.99483/ 36.62953, -86.00534 | Allen |
| Rough River of Green River* | Linders Creek to Vertrees Creek | 37.63677, -86.20180/ 37.69001, -86.13664 | Hardin |
| Russell Creek of Green River* | Mouth to Columbia Waste Water Treatment Plant | 37.22938, -85.51040/ 37.10942, -85.30532 | Adair, Green |
| Russell Creek of Green River* | Reynolds Creek to Hudson Creek and Mount Olive Creek | 37.04137, -85.18825/ 37.09160, -85.10334 | Adair, Russell |
| Sixes Creek of Wild Branch* | Mouth to Headwaters | 37.34154, -86.69993/ Headwaters | Ohio |
| Sulphur Branch of Alexander Creek* | Mouth to Headwaters | 37.12892, -86.26930/ Headwaters | Edmonson |
| Thompson Branch of West Fork Drakes Creek* | Webb Branch to Tennessee State Line | 36.65809, -86.49862/ 36.65202, -86.47973 | Simpson |

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| Trammel Creek of Drakes Creek* | Mouth to Tennessee State Line | 36.87579, -86.37443/ 36.63973, -86.19775 | Allen, Warren |
| Unnamed Tributary of Big Run Branch of Big Run Branch | Mouth to Loss of Riparian Buffer and Unnamed Tributary from the South West | 37.50894, -86.33964/ 37.48244, -86.32314 | Grayson |
| Unnamed Tributary of Green River of Ohio River* | Mouth to Headwaters. | 37.19160, -85.12732/ Headwaters | Adair |
| Unnamed Tributary of White Oak Creek of Green River Lake* | CR-1073 Hovious Ridge Road to KY-76 Elkhorn Road | 37.23736, -85.22392/ 37.26178, -85.19616 | Adair |
| West Fork Pond River of Pond River* | Unnamed Tributary (0.8 River Miles Downstream of CR-1078 J P Grace Road) to East Branch Pond River | 37.09098, -87.36698/ 37.03070, -87.40602 | Christian |
| KENTUCKY RIVER BASIN | | | |
| Backbone Creek of Sixmile Creek* | Mouth to Scrabble Creek | 38.33978, -84.99690/ 38.32025, -84.99355 | Franklin, Henry, Shelby |
| Bear Branch of North Fork Kentucky River | Upstream of Sediment Pond to Headwaters | 37.13248, -83.10152/ Headwaters | Perry |
| Big Double Creek of Red Bird River* | Mouth to Left and Right Fork Big Double Creek | 37.14045, -83.58768/ 37.09053, -83.60245 | Clay |
| Bill Branch of Laurel Fork* | Mouth to Right and Left Fork Bill Branch | 36.93025, -83.30921/ 36.93249, -83.30578 | Harlan |
| Bill Oak Branch of Laurel Fork | Mouth to Headwaters | 37.33478, -83.56541/ Headwaters | Owsley |
| Billey Fork of Millers Creek | Land Use Change (1.0 River Mile Upstream of Wodward Creek) to Headwaters | 37.67957, -83.79653/ Headwaters | Estill, Lee |
| Boyd Run of North Elkhorn Creek | Mouth to Cherry Run | 38.21316, -84.48529/ 38.21731, -84.47430 | Scott |
| Buffalo Creek of South Fork Kentucky River* | Mouth to Right Fork and Left Fork Buffalo Creek | 37.35051, -83.65233/ 37.35163, -83.63576 | Owsley |
| Bullskin Creek of South Fork Kentucky River | Mouth to Headwaters | 37.27322, -83.64441/ Headwaters | Clay, Leslie |
| Camp Branch of Spass Creek | Mouth to Headwaters | 37.88067, -83.70589/ Headwaters | Menifee |
| Cavanaugh Creek of South Fork Station Camp Creek* | Mouth to Headwaters | 37.55370, -83.94222/ Headwaters | Jackson |
| Chester Creek of Middle Fork Red River* | Mouth to Headwaters | 37.72746, -83.65906/ Headwaters | Wolfe |
| Clear Creek of Kentucky River* | Mouth to East Fork Clear Creek | 37.93654, -84.79613/ 37.92667, -84.72576 | Woodford |
| Clemons Fork of Buckhorn Creek* | Mouth to Headwaters | 37.45511, -83.16582/ Headwaters | Breathitt |
| Coles Fork of Buckhorn Creek * | Mouth to Headwaters | 37.45720, -83.13468/ Headwaters | Breathitt, Knott |
| Craig Creek of Kentucky River* | Mouth to Unnamed Tributary | 37.97902, -84.82058/ 37.98133, -84.78474 | Woodford |
| Deep Ford Branch of Cutshin Creek | Upstream of Pond to Headwaters | 37.19085, -83.34793/ Headwaters | Leslie |
| Drennon Creek of Kentucky River* | Fivemile Creek to Town Creek | 38.46577, -85.09825/ 38.43094, -85.11912 | Henry |
| East Fork Indian Creek of Indian Creek* | Mouth to Headwaters | 37.86030, -83.67480/ Headwaters | Menifee |
| Elisha Creek of Red Bird River* | Land Use Change (0.4 River Miles Downstream of Left Fork Elisha Creek) to Right and Big Middle Fork Elisha Creek | 37.08454, -83.53407/ 37.08165, -83.51802 | Leslie |
| Emily Run of Drennon Creek | Mouth to Unnamed Tributary (0.5 River Miles Downstream of CR-1010 New Cut Road) | 38.50114, -85.07706/ 38.51135, -85.12727 | Henry |
| Evans Fork of Billey Fork* | Mouth to Headwaters | 37.69659, -83.77567/ Headwaters | Estill |
| Falling Rock Branch of Clemons Fork* | Mouth to Headwaters | 37.47650, -83.14005/ Headwaters | Breathitt |
| Gilbert Creek of Kentucky River | Mouth to Unnamed Tributary (at Milepost 7.06 KY-513 Gilberts Creek Road) | 37.97571, -84.85305/ 37.97570, -84.85305 | Anderson |
| Gladie Creek of Red River* | Land Use Change (Downstream of Sargent Branch) to Long Branch | 37.83977, -83.60773/ 37.86994, -83.53192 | Menifee |
| Goose Creek of Red Bird River | Mouth to Laurel Creek | 37.26982, -83.64347/ 37.21607, -83.71750 | Clay |
| Grier Creek of Kentucky River* | Kentucky River Backwaters to Unnamed Tributary | 38.02224, -84.82900/ 38.01901, -84.78975 | Woodford |
| Grindstone Creek of Kentucky River* | Kentucky River Backwaters to Pond | 38.27095, -84.87841/ 38.25169, -84.86151 | Franklin |

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| Hardwick Creek of Red River | Mouth to Little Hardwick Creek | 37.83287, -83.92629/ 37.80637, -83.91057 | Powell |
| Hell for Certain Creek of Middle Fork Kentucky River | Mouth to Cucumber Branch | 37.25900, -83.38193/ 37.21916, -83.44410 | Leslie |
| Hines Creek of Kentucky River* | Kentucky River Backwaters to Unnamed Tributary | 37.87669, -84.37216/ 37.87346, -84.35034 | Madison |
| Honey Branch of Greasy Creek | Mouth to Headwaters | 37.01785, -83.35630/ Headwaters | Leslie |
| Hopper Cave Branch of Cavenaugh Creek* | Mouth to Headwaters | 37.54046, -83.96364/ Headwaters | Jackson |
| Indian Creek of Eagle Creek* | Mouth to Headwaters | 38.64460, -84.97133/ Headwaters | Carroll |
| Indian Fork of Sixmile Creek* | Mouth to Headwaters | 38.30060, -85.04584/ Headwaters | Shelby |
| John Carpenter Fork of Clemons Fork* | Mouth to Headwaters | 37.48191, -83.13306/ Headwaters | Breathitt |
| John Littles Branch of North Fork Kentucky River | Mouth to Headwaters | 37.44138, -83.36137/ Headwaters | Breathitt |
| Joyce Fork of Cortland Fork* | Mouth to Headwaters | 37.35043, -83.55770/ Headwaters | Owsley |
| Katies Creek of Red Bird River | Mouth to Headwaters | 37.03516, -83.54001/ Headwaters | Clay |
| Laurel Fork of Left Fork Buffalo Creek* | Cortland Fork to Big Branch | 37.34758, -83.56464/ 37.32795, -83.56754 | Owsley |
| Left Fork Big Double Creek of Big Double Creek* | Mouth to Headwaters | 37.09053, -83.60245/ Headwaters | Clay |
| Line Fork of North Fork Kentucky River* | Defeated Creek to Headwaters | 37.05325, -82.98858/ Headwaters | Letcher |
| Little Middle Fork Elisha Creek of Big Middle Fork Elisha Creek* | Mouth to Headwaters | 37.08174, -83.51566/ Headwaters | Leslie |
| Little Millseat Branch of Clemons Fork* | Mouth to Headwaters | 37.47206, -83.14624/ Headwaters | Breathitt |
| Little Negro Creek of Negro Creek | Mouth to Unnamed Tributary | 37.39375, -84.41432/ 37.36326, -84.42477 | Rockcastle |
| Little Sixmile Creek of Sixmile Creek* | Mouth to Headwaters | 38.38438, -85.00254/ Headwaters | Henry |
| Little Sturgeon Creek of Sturgeon Creek | Mouth to Headwaters | 37.47837, -83.81345/ Headwaters | Owsley |
| Low Gap Branch of Elk Creek* | Mouth to Headwaters | 37.15340, -82.98357/ Headwaters | Letcher |
| Lower Devil Creek of North Fork Kentucky River | Mouth to Middle Fork Lower Devil Creek | 37.64419, -83.60972/ 37.68891, -83.60403 | Lee, Wolfe |
| Lower Howard Creek of Kentucky River | Mouth to West Fork Lower Howard Creek | 37.91807, -84.27256/ 37.93369, -84.26952 | Clark |
| Lulbegrud Creek of Red River | Mouth to Falls Branch | 37.83781, -84.00193/ 37.88288, -83.99603 | Clark, Powell |
| Middle Fork Kentucky River of North Fork Kentucky River | Mouth to Upper Twin Creek | 37.58669, -83.67003/ 37.54597, -83.56307 | Lee, Breathitt |
| Middle Fork Kentucky River of North Fork Kentucky River* | Hurts Creek to Greasy Creek | 37.15444, -83.37052/ 37.07658, -83.39234 | Leslie |
| Middle Fork Red River of Red River | South Fork Red River to Natural Bridge State Park Lake | 37.82360, -83.75245/ 37.77769, -83.67745 | Powell |
| Mike Branch of Laurel Fork | Mouth to Headwaters | 37.33908, -83.56338/ Headwaters | Owsley |
| Mill Creek of Kentucky River* | 0.05 River Miles Upstream of PS-1306 Perry Park Road to Headwaters | 38.54565, -84.99933/ Headwaters | Owen |
| Millseat Branch of Clemons Fork* | Mouth to Headwaters | 37.47440, -83.14367/ Headwaters | Breathitt |
| Muddy Creek of Kentucky River* | 0.1 River Mile Upstream of KY-52 Irvine Road to Viny Fork | 37.74039, -84.15691/ 37.70998, -84.18205 | Madison |
| Musselman Creek of Eagle Creek* | Mouth to Headwaters | 38.56845, -84.67732/ Headwaters | Grant |
| Red Bird River of South Fork Kentucky River | Mouth to Big Creek | 37.26973, -83.64341/ 37.16648, -83.58233 | Clay |
| Right Fork Beehive Branch of Beehive Branch | Residential Area to Headwaters | 37.06172, -83.10148/ Headwaters | Perry |
| Right Fork Buffalo Creek of Buffalo Creek* | Mouth to Headwaters | 37.35163, -83.63575/ Headwaters | Owsley |
| Right Fork Elisha Creek of Elisha Creek | Mouth to Headwaters | 37.08165, -83.51802/ Headwaters | Leslie |
| Roaring Fork of Lewis Fork* | Mouth to Headwaters | 37.46327, -83.17081/ Headwaters | Breathitt |

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| Rock Lick Creek of South Fork Station Camp Creek* | Mouth to Headwaters | 37.539508, -84.010769/ Headwaters | Jackson |
| Sand Ripple Creek of Kentucky River* | Kentucky River Backwaters to Headwaters | 38.37772, -84.89991/ Headwaters | Franklin, Henry |
| Severn Creek of Kentucky River* | Kentucky River Backwaters to North Fork Severn Creek | 38.46397, -84.91060/ 38.46646, -84.89242 | Owen |
| Shaker Creek of Kentucky River | Kentucky River Backwaters to Shawnee Run | 37.84717, -84.76738/ 37.84378, -84.76810 | Mercer |
| Shelly Rock Fork of Millseat Branch* | Mouth to Headwaters | 37.48162, -83.15038/ Headwaters | Breathitt |
| Sixmile Creek of Kentucky River* | Little Sixmile Creek to Cedarmore Lake Dam | 38.38448, -85.00261/ 38.32816, -85.01600 | Henry, Shelby |
| South Fork Kentucky River of Kentucky River | Mouth to Sexton Creek | 37.56996, -83.71085/ 37.35900, -83.68198 | Lee, Owsley |
| South Fork Red River of Middle Fork Kentucky River | Mouth to Sand Lick Fork | 37.82360, -83.75245/ 37.78067, -83.73355 | Powell |
| South Fork Station Camp Creek of Station Camp Creek* | Mouth to Rock Lick Creek | 37.53286, -83.90931/ 37.55370, -83.94222 | Jackson |
| Spring Creek of Red Bird River | Mouth to Little Spring Creek | 37.06192, -83.54144/ 37.05562, -83.56302 | Clay |
| Spruce Branch of Red Bird Creek* | Mouth to Headwaters | 36.95696, -83.53108/ Headwaters | Clay |
| Station Camp Creek of Kentucky River* | Land Use Change (1.25 River Miles Upstream of Sparks Branch) to South Fork Station Camp Creek | 37.58261, -83.92802/ 37.53287, -83.90929 | Estill |
| Steeles Run of South Elkhorn Creek | Mouth to Unnamed Tributary (0.1 River Miles Upstream of PV-3002 Miss Alleged Drive ) | 38.11099, -84.62871/ 38.06735, -84.59554 | Fayette, Woodford |
| Steer Fork of War Fork* | Mouth to Headwaters | 37.45466, -83.92700/ Headwaters | Jackson |
| Sturgeon Creek of Kentucky River* | Duck Fork to Little Sturgeon Creek | 37.53576, -83.78177/ 37.47850, -83.81356 | Lee, Owsley |
| Sugar Creek of Red Bird River* | Land Use Change (at End of CR-1119 Sugar Creek Road) to Headwaters | 37.11885, -83.55208/ Headwaters | Clay, Leslie |
| Sulphur Lick Creek of Elkhorn Creek* | Mouth to Headwaters | 38.28765, -84.80211/ Headwaters | Franklin |
| Unnamed Tributary of Cawood Branch of Beech Fork* | Mouth to Headwaters | 36.93676, -83.37278/ Headwaters | Leslie |
| Unnamed Tributary of Cedar Creek of Kentucky River* | Mouth to Headwaters | 38.37196, -84.79664/ Headwaters | Owen |
| Unnamed Tributary of Glenns Creek of Kentucky River* | Mouth to Headwaters | 38.14826, -84.83651/ Headwaters | Woodford |
| Unnamed Tributary of Jacks Creek of Kentucky River* | Mouth to Headwaters | 37.85200, -84.36529/ Headwaters | Madison |
| Unnamed Tributary of Kentucky River of Ohio River* | Mouth to Land Use Change | 38.21913, -84.87712/ 38.23174, -84.86242 | Franklin |
| Unnamed Tributary of Line Fork of North Fork Kentucky River* | Mouth to Headwaters | 37.07769, -82.99241/ Headwaters | Letcher |
| War Fork of Station Camp Creek* | Steer Fork to Headwaters | 37.45467, -83.92699/ Headwaters | Jackson |
| Watches Fork of Laurel Fork | Mouth to Headwaters | 37.34456, -83.56203/ Headwaters | Owsley |
| Wild Dog Creek of Sturgeon Creek | Mouth to Dry Fork | 37.48729, -83.82329/ 37.48235, -83.82972 | Owsley |
| Wolfpen Creek of Red River* | Mouth to Headwaters | 37.82549, -83.63094/ Headwaters | Menifee |
| LICKING RIVER BASIN | | | |
| Blackwater Creek of Licking River* | Eaton Creek to Greasy Fork | 37.94073, -83.41328/ 37.87922, -83.43981 | Morgan |
| Blanket Creek of Licking River | Mouth to Unnamed Tributary | 38.65560, -84.28532/ 38.64266, -84.29929 | Pendleton |
| Botts Fork of Brushy Fork* | Mouth to Land Use Change | 37.94933, -83.50601/ 37.93022, -83.53288 | Menifee |
| Bowman Creek of Licking River | Mouth to Unnamed Tributary at CR-1135 Martin Road | 38.89246, -84.44237/ 38.89404, -84.50217 | Kenton |
| Brushy Fork of Beaver Creek* | Cave Run Lake Backwaters to Headwaters | 37.98439, -83.50523/ Headwaters | Menifee |
| Brushy Fork of Middle Fork Grassy Creek* | Mouth to Headwaters | 38.70106, -84.44697/ Headwaters | Pendleton |
| Bucket Branch of North Fork Licking River* | Mouth to Headwaters | 38.05169, -83.31594/ Headwaters | Morgan |

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| Cedar Creek of Licking River | Mouth to North Branch Cedar Creek | 38.47637, -84.12301/ 38.49051, -84.10732 | Robertson |
| Craney Creek of North Fork Licking River | Mouth to Headwaters | 38.06493, -83.35154/ Headwaters | Morgan, Rowan |
| Devils Fork of North Fork Licking River* | Mouth to Headwaters | 38.04413, -83.30378/ Headwaters | Elliott, Morgan |
| Flour Creek of Licking River | Mouth to Unnamed Tributary (0.05 River Miles Upstream of CR-1021 Vater Road) | 38.78982, -84.34388/ 38.80192, -84.32458 | Pendleton |
| Grovers Creek of Kincaid Lake* | Kincaid Lake Backwaters to Unnamed Tributary | 38.70547, -84.25273/ 38.70795, -84.21217 | Bracken, Pendleton |
| Licking River of Ohio River | End of KY-211 Auora Road to 0.6 River Miles Downstream of Salt Lick Creek | 38.17659, -83.61805/ 38.13064, -83.60581 | Bath, Rowan |
| North Fork Licking River of Cave Run Lake* | Cave Run Lake Backwaters (0.25 River Miles Downstream of Lick Branch) to Devils Fork | 38.06587, -83.36149/ 38.04413, -83.30378 | Morgan, Rowan |
| Sawyers Fork of Cruises Creek | Mouth to Headwaters | 38.84833, -84.54035/ Headwaters | Kenton |
| Slabcamp Creek of Craney Creek | Mouth to Headwaters | 38.09987, -83.32893/ Headwaters | Rowan |
| Slate Creek of Licking River | Mouth to Mill Creek | 38.21841, -83.69863/ 38.11220, -83.74665 | Bath |
| South Fork Grassy Creek of Grassy Creek* | Mouth to Greasy Creek | 38.79193, -84.42895/ 38.68302, -84.48375 | Pendleton |
| Unnamed Tributary of Shannon Creek of North Fork Licking River | Mouth to Headwaters | 38.55443, -83.93335/ Headwaters | Mason |
| Welch Fork of Brushy Fork* | Mouth to Unnamed Tributary (Downstream of CR-1160 Fox Chase Road) | 37.94405, -83.50360/ 37.93209, -83.51361 | Menifee |
| West Creek of Licking River* | Mouth to Headwaters | 38.53643, -84.20046/ Headwaters | Harrison, Robertson |
| Willow Creek of North Fork Licking River | Mouth to Logans Branch | 38.58589, -84.17627/ 38.63013, -84.16426 | Bracken |
| LITTLE SANDY RIVER BASIN | | | |
| Arabs Fork of Big Sinking Creek* | Mouth to Headwaters | 38.22358, -83.15918/ Headwaters | Elliott |
| Big Caney Creek of Grayson Lake (Little Sandy River)* | Grayson Lake Backwaters to Headwaters | 38.15880, -83.09431/ Headwaters | Elliott, Rowan |
| Big Sinking Creek of Little Sandy River* | KY-986 to Arabs Fork | 38.24972, -83.11729/ 38.22360, -83.15915 | Carter, Elliott |
| Laurel Creek of Little Sandy River* | CR-1352 Stegall Cold Spring Road to Headwaters | 38.12912, -83.18963/ Headwaters | Elliott, Rowan |
| Meadow Branch of Little Fork Little Sandy River* | Mouth to Headwaters | 38.07711, -82.99544/ Headwaters | Elliott |
| Middle Fork Little Sandy River of Little Sandy River* | Mouth to Sheepskin Branch | 38.12135, -83.09262/ 38.09139, -83.09075 | Elliott |
| Nichols Fork of Little Fork Little Sandy River* | Green Branch to Headwaters | 38.08073, -83.00200/ Headwaters | Elliott |
| LOWER CUMBERLAND RIVER BASIN | | | |
| Crooked Creek of Energy Lake* | Energy Lake Backwaters to Headwaters | 36.85193, -88.03311/ Headwaters | Trigg |
| Donaldson Creek of Lake Barkley* | Lake Barkley Backwaters to Unnamed Tributary | 36.74924, -87.91006/ 36.74970, -87.86754 | Trigg |
| Elk Fork of Red River* | Tennessee State Line to Dry Branch | 36.64264, -87.08560/ 36.74638, -87.13221 | Todd |
| Sugar Creek of Cumberland River* | Lick Creek to Left Descending Unnamed Tributary (Upstream of KY-2232 Sugar Creek Road) | 37.17547, -88.26578/ 37.13054, -88.28340 | Livingston |
| West Fork Red River of Red River* | Tennessee State Line to Montgomery Creek | 36.64154, -87.35589/ 36.70964, -87.32988 | Christian |
| Whippoorwill Creek of Red River* | Mouth to Vicks Branch | 36.66568, -86.96368/ 36.75027, -86.99652 | Logan |
| MISSISSIPPI RIVER BASIN | | | |
| Jackson Creek of Bayou de Chien* | Mouth to Headwaters | 36.58204, -88.80298/ Headwaters | Graves |
| Murphy Pond | Entire Pond and Preserve Area | Not Applicable | Hickman |
| Obion Creek of Mississippi River* | Hurricane Creek to Little Creek | 36.75483, -89.01154/ 36.76673, -88.91258 | Carlisle, Hickman |
| Swan Pond | Entire Lake | Not Applicable | Ballard |

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| Terrapin Creek of North Fork Obion River* | Tennessee State Line to East and West Forks Terrapin Creek | 36.50113, -88.49244/ 36.55040, -88.52493 | Graves |
| OHIO RIVER BASIN | | | |
| Ashbys Fork of Woolper Creek | Mouth to KY-20 Petersburg Road | 39.03846, -84.81574/ 39.07729, -84.79534 | Boone |
| Blackford Creek of Ohio River | Little Yellow Creek to Butchers Branch | 37.90127, -86.91300/ 37.88324, -86.89596 | Daviess, Hancock |
| Crooked Creek of Ohio River* | Rush Creek to Marion City Lake Dam | 37.35915, -88.06775/ 37.31055, -88.09185 | Crittenden |
| Double Lick Creek of Woolper Creek* | Mouth to Headwaters | 39.03416, -84.78650/ Headwaters | Boone |
| Garrison Creek of Ohio River* | Mouth to Headwaters | 39.10565, -84.80643/ Headwaters | Boone |
| Harrods Creek of Ohio River | Wolfpen Branch to Brush Creek | 38.33388, -85.60350/ 38.44058, -85.42898 | Henry, Jefferson, Oldham |
| Kinniconick Creek of Ohio River* | McDowell Creek to Headwaters | 38.57479, -83.18862/ Headwaters | Lewis |
| Little South Fork of Big South Fork | Land Use Change to Headwaters | 38.82216, -84.74115/ Headwaters | Boone |
| Metropolis Lake of Ohio River | Entire Lake | 37.15096, -88.77076/ 37.14475, -88.76100 | McCracken |
| Middle Fork Massac Creek of Massac Creek* | CR-1207 Hines Road to Pond | 37.01626, -88.74480/ 36.97538, -88.72982 | McCracken |
| Pryors Fork of Corn Creek | Mouth to Land Use Change | 38.63666, -85.40210/ 38.64269, -85.33447 | Trimble |
| Second Creek of Ohio River* | Ohio River Backwaters to Headwaters | 39.08518, -84.84280/ Headwaters | Boone |
| Unnamed Tributary of Big Sugar Creek of Ohio River* | I-71 to Headwaters | 38.74961, -84.81112/ Headwaters | Gallatin |
| Unnamed Tributary of Corn Creek of Ohio River* | Mouth to Headwaters | 38.60284, -85.42320/ Headwaters | Trimble |
| Unnamed Tributary of Massac Creek of Ohio River* | Mouth to Headwaters | 36.99350, -88.69103/ Headwaters | McCracken |
| West Fork Massac Creek of Massac Creek* | KY-724 Woodville Road to Little Massac Creek | 37.08238, -88.77790/ 37.06021, -88.79830 | McCracken |
| Yellowbank Creek of Ohio River* | KY-259 to Headwaters | 37.98102, -86.50810/ Headwaters | Breckinridge |
| SALT RIVER BASIN | | | |
| Beech Fork of Rolling Fork | Hot Water Creek to Headwaters | 37.59785, -85.04111/ Headwaters | Boyle, Marion |
| Brashears Creek of Salt River | Guist Creek to Bullskin and Clear Creeks | 38.09923, -85.28643/ 38.16191, -85.28012 | Shelby, Spencer |
| Cedar Creek of Salt River* | Mouth to Greens Branch | 38.00214, -85.66327/ 37.98224, -85.60071 | Bullitt |
| Chaplin River of Beech Fork* | Thompson Creek to Cornishville, KY | 37.85567, -85.03830/ 37.80423, -84.98705 | Mercer, Washington |
| Doctors Fork of Chaplin River | Mouth to Begley Branch | 37.67567, -84.96085/ 37.64612, -84.99949 | Boyle |
| Guist Creek of Brashears Creek | Mouth to Jeptha Creek | 38.09920, -85.28615/ 38.13244, -85.19651 | Spencer |
| Harts Run of Wilson Creek* | Mouth to Headwaters | 37.86326, -85.61160/ Headwaters | Bullitt |
| Indian Creek of Thompson Creek | Mouth to Unnamed Tributary | 37.85118, -84.97889/ 37.87350, -84.94786 | Mercer |
| Lick Creek of Long Lick Creek | Mouth to 0.1 River Miles Downstream of Dam | 37.81851, -85.21553/ 37.82616, -85.16402 | Washington |
| Otter Creek of Rolling Fork* | Land Use Change (0.04 River Miles Downstream of West Fork Otter Creek) to East and Middle Fork Otter Creek | 37.50830, -85.58171/ 37.49520, -85.57644 | Larue |
| Overalls Creek of Wilson Creek* | Mouth to West Fork Overalls Creek | 37.87053, -85.60352/ 37.88749, -85.60604 | Bullitt |
| Plum Run of Glens Creek | Mouth to Headwaters | 37.85773, -85.12186/ Headwaters | Washington |
| Salt Lick Creek of Rolling Fork* | Mouth to Headwaters | 37.55415, -85.52125/ Headwaters | Larue, Marion |

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| Sulphur Creek of Chaplin River* | Mouth to Cheese Lick and Brush Creek | 37.88144, -85.09987/ 37.88844, -85.02061 | Anderson, Mercer, Washington |
| Unnamed Tributary of Unnamed Tributary of Sulphur Creek of Sulphur Creek | Mouth to End of Forested Reach | 37.88903, -85.09514/ 37.89877, -85.09422 | Anderson |
| West Fork Otter Creek of Otter Creek* | Mouth to Headwaters | 37.50770, -85.58158/ Headwaters | Larue |
| Wilson Creek of Rolling Fork* | Mouth to Headwaters | 37.81170, -85.73756/ Headwaters | Bullitt, Nelson |
| TENNESSEE RIVER BASIN | | | |
| Blood River of Kentucky Lake* | McCullough Fork to Tennessee State Line | 36.52538, -88.17089/ 36.49911, -88.17594 | Calloway |
| Clarks River of Tennessee River | Persimmon Slough Creek to Middle Fork Creek | 36.91438, -88.42009/ 36.90303, -88.40517 | Marshall |
| Grindstone Creek of Kentucky Lake* | Kentucky Lake Backwaters to Headwaters | 36.58230, -88.11886/ Headwaters | Calloway |
| Panther Creek of Kentucky Lake (Blood River)* | Kentucky Lake Backwaters (0.05 River Miles Downstream From End of CR-1137 Deerberry Lane) to Headwaters | 36.56275, -88.15697/ Headwaters | Calloway |
| Panther Creek of West Fork Clarks River* | Upstream of Channelization (at CR-1088 McKendree Church Road ) to Impoundment | 36.80551, -88.52235/ 36.74409, -88.51418 | Graves |
| Rockhouse Creek of Clarks River | Mouth to East and West Fork Rockhouse Creek | 36.74871, -88.27661/ 36.70430, -88.31580 | Calloway |
| Soldier Creek of West Fork Clarks River* | Mouth to North Fork and South Fork Soldier Creek | 36.79642, -88.47535/ 36.78881, -88.39095 | Marshall |
| Sugar Creek of Kentucky Lake (Blood River) | Kentucky Lake Backwaters (0.05 River Miles Upstream of KY-732 Irvine Cobb Road ) to CR-1014 Old Newburg Road | 36.65222, -88.15062/ 36.65780, -88.15776 | Calloway |
| Sugar Creek of West Fork Clarks River | Mouth to Unnamed Reservoir | 36.90001, -88.54781/ 36.87609, -88.49180 | Graves |
| Trace Creek of West Fork of Clarks River* | Mouth to Neely Branch | 36.84213, -88.53168/ 36.80975, -88.56009 | Graves |
| Unnamed Tributary of Unnamed Tributary of Panther Creek of West Fork Clarks River* | Mouth to Headwaters | 36.79894, -88.53176/ Headwaters | Graves |
| West Fork Clarks River of Clarks River | Panther Creek to Soldier Creek | 36.82217, -88.51448/ 36.79648, -88.47555 | Graves |
| West Fork Clarks River of Clarks River* | Soldier Creek to Duncan Creek | 36.79646, -88.47554/ 36.76359, -88.45642 | Marshall |
| Wildcat Creek of Blood River* | CR-1131 Wright Road to Headwaters | 36.61320, -88.18308/ Headwaters | Calloway |
| TRADEWATER RIVER BASIN | | | |
| East Fork Flynn Fork of Flynn Fork* | US-62 Dawson Road to Headwaters | 37.14805, -87.76320/ Headwaters | Caldwell |
| Piney Creek of Lake Beshear* | Lake Beshear Backwaters to Headwaters | 37.10253, -87.70751/ Headwaters | Caldwell, Christian |
| Sandlick Creek of Tradewater River* | Camp Creek to Headwaters | 37.02761, -87.59583/ Headwaters | Christian |
| Tradewater River of Ohio River | Caney Creek to Buffalo Creek | 37.16249, -87.66399/ 37.15384, -87.64868 | Hopkins |
| Tradewater River of Ohio River* | Drippings Spring Branch to Buntin Lake Dam | 37.03680, -87.52727/ 36.95621, -87.48714 | Christian |
| Unnamed Tributary of Piney Creek of Lake Beshear* | Mouth to Headwaters | 37.08000, -87.71066/ Headwaters | Caldwell |
| Unnamed Tributary of Sandlick Creek of Tradewater River* | Mouth to Headwaters | 37.00769, -87.59282/ Headwaters | Christian |
| TYGARTS CREEK BASIN | | | |
| Tygarts Creek of Ohio River | Lost Creek to Leatherwood Branch | 38.51484, -82.97672/ 38.48574, -83.02801 | Greenup |
| UPPER CUMBERLAND RIVER BASIN | | | |
| Bad Branch of Poor Fork Cumberland River* | Mouth to Headwaters | 37.06615, -82.77128/ Headwaters | Letcher |
| Bark Camp Creek of Cumberland River* | Upstream of Cumberland River Backwaters to Martins Fork | 36.90856, -84.30678/ 36.89760, -84.26548 | Whitley |
| Bear Creek of Big South Fork Cumberland River | Mouth to Tennessee State Line | 36.62673, -84.53343/ 36.59643, -84.52092 | McCreary |
| Beaver Creek of Cumberland River* | Mouth to Freeman Fork and Middle Fork | 36.94623, -84.41643/ 36.89501, -84.44078 | McCreary |

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|---|---|---|---|
| Bee Lick Creek of Brushy Creek | Mouth to Warren Branch | 37.26772, -84.43760/ 37.30223, -84.49337 | Pulaski |
| Brownies Creek of Cumberland River* | Blacksnake Branch to Headwaters | 36.70309, -83.51605/ Headwaters | Bell, Harlan |
| Brush Creek of Roundstone Creek | Wolf Creek to Reemergence of Sinking Creek | 37.38934, -84.26451/ 37.46557, -84.22675 | Rockcastle |
| Brushy Creek of Buck Creek* | Mouth to Headwaters | 37.21223, -84.46737/ Headwaters | Pulaski, Rockcastle |
| Buck Creek of Lake Cumberland (Cumberland River)* | Backwaters of Lake Cumberland to 0.8 River Miles Upstream of Hurricane Creek | 37.04922, -84.42953/ 37.35997, -84.59522 | Lincoln, Pulaski |
| Bunches Creek of Cumberland River* | Mouth to Amos Falls Branch and Seminary Branch | 36.83271, -84.31786/ 36.82749, -84.26979 | Whitley |
| Cane Creek of Rockcastle River* | Mouth to Dam/Pond in Headwaters | 37.02646, -84.30837/ 37.05336, -84.17792 | Laurel |
| Clear Creek of Roundstone Creek | Scaffold Cane Branch to Davis Branch | 37.44240, -84.27859/ 37.48595, -84.25532 | Rockcastle |
| Clifty Creek of Brushy Creek | Mouth to Rocky Branch | 37.21642, -84.46933/ 37.24147, -84.48323 | Pulaski |
| Cogur Fork of Indian Creek* | Mouth to Headwaters | 36.79972, -84.39768/ Headwaters | McCreary |
| Cumberland River of Lake Cumberland | Kentucky Wild River Boundaries | 36.87220, -84.32413/ 36.75173, -84.28413 | McCreary, Whitley |
| Dog Slaughter Creek of Cumberland River* | Mouth to North and South Fork Dog Slaughter Creek | 36.85996, -84.31441/ 36.85930, -84.30072 | Whitley |
| Eagle Creek of Cumberland River* | Mouth to Headwaters | 36.84359, -84.34359/ Headwaters | McCreary |
| Fishing Creek of Lake Cumberland (Cumberland River) | Lake Cumberland Backwaters to Puncheon Creek | 37.12475, -84.71187/ 37.22878, -84.71567 | Casey, Lincoln, Pulaski |
| Fugitt Creek of Clover Fork Cumberland River* | Land Use Change to Headwaters | 36.91670, -83.08021/ Headwaters | Harlan |
| Horse Lick Creek of Rockcastle River* | Mouth to Clover Bottom Creek | 37.31994, -84.13808/ 37.40908, -84.12219 | Jackson, Rockcastle |
| Howards Creek of Dale Hollow Lake* | Dale Hollow Lake Backwaters to Headwaters | 36.69404, -85.22579/ Headwaters | Clinton |
| Indian Creek of Cumberland River* | Kilburn Fork to Barren Fork | 36.80492, -84.37957/ 36.78654, -84.41624 | McCreary |
| Jackie Branch of Bark Camp Creek* | Mouth to Headwaters | 36.90449, -84.27945/ Headwaters | Whitley |
| Jellico Creek of Cumberland River | Mouth to Jacks Creek | 36.75172, -84.27458/ 36.72276, -84.27523 | McCreary, Whitley |
| Kettle Creek of Cumberland River | Tennessee State Line to Wells Creek | 36.61526, -85.49117/ 36.65104, -85.44504 | Monroe |
| Kilburn Fork of Indian Creek | Mouth to Headwaters | 36.80503, -84.37958/ Headwaters | McCreary |
| Laurel Creek of Marsh Creek | Mouth to Laurel Creek Lake Dam | 36.73182, -84.37118/ 36.69308, -84.44385 | McCreary |
| Laurel Fork of Clear Fork* | Tennessee State Line to Tiny Branch | 36.58947, -83.98760/ 36.63172, -83.95268 | Whitley |
| Laurel Fork of Middle Fork Rockcastle River* | Mouth to Headwaters | 37.36733, -84.04829/ Headwaters | Jackson |
| Leatherwood Creek of Marrowbone Creek | Mouth to Headwaters | 36.83564, -85.56409/ Headwaters | Cumberland, Metcalfe, Monroe |
| Left Fork Fugitt Creek of Fugitt Creek | Mouth to Headwaters | 36.92528, -83.04509/ Headwaters | Harlan |
| Little South Fork of Cumberland River* | Backwaters of Lake Cumberland to Langham Branch | 36.80583, -84.59556/ 36.64854, -84.78912 | McCreary, Wayne |
| Little White Oak Creek of White Oak Creek | Mouth to Headwaters | 37.10204, -84.19978/ Headwaters | Laurel |
| Marsh Creek of Cumberland River* | Ford Crossing at CR-1060 East Kidd School Road and CR-1110 Kidd School Road to Tennessee State Line | 36.69964, -84.34471/ 36.59540, -84.40845 | McCreary |
| Martins Fork of Cumberland River | Rough Branch to Headwaters | 36.69766, -83.39220/ Headwaters | Bell, Harlan |
| McFarland Creek of Cumberland River | Poore Branch to Tennessee State Line | 36.63276, -85.50960/ 36.61585, -85.55184 | Monroe |
| McFarland Creek of Cumberland River | Tennessee State Line to Tennessee State Line | 36.61628, -85.57728/ 36.61646, -85.58620 | Monroe |

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|---|---|---|---|
| Meshack Creek of Cumberland River | Mouth to Pitcock Branch | 36.70211, -85.53507/ 36.73160, -85.54153 | Monroe |
| Middle Fork Rockcastle River of Rockcastle River* | Mouth to Indian Creek and Laurel Fork | 37.33585, -84.11898/ 37.36739, -84.04838 | Jackson |
| Mud Camp Creek of Cumberland River* | Mouth to Collins Branch | 36.76461, -85.51225/ 36.77858, -85.51607 | Cumberland |
| Mud Camp Creek of Cumberland River* | Unnamed Tributary (at Milepost 0.25 of CR-1335 Sawmill Hollow Road) to Headwaters | 36.78298, -85.55654/ Headwaters | Cumberland, Monroe |
| Otter Creek of Lake Cumberland | 0.75 River Miles Upstream of Gap Creek to Carpenter Fork | 36.76911, -84.96678/ 36.70801, -84.95672 | Wayne |
| Poor Fork Cumberland River of Cumberland River* | Franks Creek to Headwaters | 37.05547, -82.80558/ Headwaters | Letcher |
| Presley House Branch of Poor Fork Cumberland River* | Mouth to Headwaters | 37.06433, -82.79065/ Headwaters | Letcher |
| Puncheoncamp Branch of Rock Creek* | Mouth to Headwaters | 36.65874, -84.64042/ Headwaters | McCreary |
| Sand Lick Creek of Crocus Creek | Mouth to Unnamed Tributary | 36.92458, -85.27126/ 36.92129, -85.24942 | Adair, Cumberland, Russell |
| Shilalah Creek of Clear Fork* | Mouth to to Headwaters | 36.66632, -83.59259/ Headwaters | Bell |
| Sinking Creek of Rockcastle River* | Mouth to White Oak Creek | 37.10193, -84.27981/ 37.09095, -84.20416 | Laurel |
| South Fork Dog Slaughter Creek of Dog Slaughter Creek* | Mouth to Headwaters | 36.85930, -84.30072/ Headwaters | Whitley |
| South Fork Rockcastle River of Rockcastle River | Mouth to to White Oak Creek | 37.33576, -84.11903/ 337.29097, -84.08801 | Jackson, Laurel |
| Sulphur Creek of Cumberland River | Little Sulphur Creek to Baxter Branch | 36.68446, -85.57250/ 36.68327, -85.60582 | Monroe |
| Sulphur Creek of Dale Hollow Lake (Wolf River)* | Dale Hollow Reservoir Backwaters to Headwaters | 36.64784, -85.20342/ Headwaters | Clinton |
| Unnamed Tributary of Cane Creek of Rockcastle River | Mouth to Headwaters | 37.05162, -84.19761/ Headwaters | Laurel |
| Unnamed Tributary of Rock Creek of Big South Fork Cumberland River* | Mouth to Headwaters | 36.66420, -84.62917/ Headwaters | McCreary |
| Unnamed Tributary of Rock Creek of Big South Fork Cumberland River* | Mouth to Headwaters | 36.64450, -84.71115/ Headwaters | McCreary |
| Watts Branch of Rock Creek* | Mouth to Headwaters | 36.65759, -84.65619/ Headwaters | McCreary |
| Watts Creek of Cumberland River* | Camp Blanton Lake to Headwaters | 36.86035, -83.37971/ Headwaters | Harlan |
| White Oak Creek of Sinking Creek | Little White Oak Creek to Headwaters | 37.10204, -84.19978/ Headwaters | Laurel |

| [~~Table 2 SURFACE WATERS CATEGORIZED AS EXCEPTIONAL WATER~~ | | | |
|---|---|---|---|
| ~~Stream~~ | ~~Segment~~ | ~~River Miles~~ | ~~County~~ |
| ~~BIG SANDY RIVER BASIN~~ | | | |
| ~~Hobbs Fork of Pigeonroost Fork of Wolf Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-3.9~~ | ~~Martin~~ |
| ~~Lower Pigeon Branch of Elkhorn Creek*~~ | ~~Left Fork to Headwaters~~ | ~~0.6-1.9~~ | ~~Pike~~ |
| ~~Russell Fork of Levisa Fork of Big Sandy River*~~ | ~~Clinch Field RR Yard off HWY 80 to Virginia State Line~~ | ~~15.0-16.5~~ | ~~Pike~~ |
| ~~Thompson Fork of Souders Branch~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.0~~ | ~~Floyd~~ |
| ~~Toms Branch of Elkhorn Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.6~~ | ~~Pike~~ |
| ~~Unidentified Tributary of Hobbs Fork*~~ | ~~Hobbs Fork of Pigeonroost Fork to Headwaters~~ | ~~0.0-0.6~~ | ~~Martin~~ |
| ~~Unidentified Tributary of Open Fork Paint Creek~~ | ~~Mouth to Headwaters~~ | ~~0.0-0.8~~ | ~~Morgan~~ |
| ~~LITTLE SANDY RIVER BASIN~~ | | | |
| ~~Arabs Fork of Big Sinking Creek*~~ | ~~Clay Fork to Headwaters~~ | ~~0.0-5.1~~ | ~~Elliott~~ |
| ~~Big Caney Creek*~~ | ~~Grayson Lake to Headwaters~~ | ~~1.8-15.3~~ | ~~Elliott, Rowan~~ |
| ~~Big Sinking Creek of Little Sandy River*~~ | ~~SR 986 to Clay Fork and Arab Fork~~ | ~~6.1-15.8~~ | ~~Carter, Elliott~~ |
| ~~Meadow Branch of Little Sandy River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.4~~ | ~~Elliott~~ |
| ~~Middle Fork Little Sandy River*~~ | ~~Mouth to Sheepskin Branch~~ | ~~0.0-3.4~~ | ~~Elliott~~ |
| ~~Nichols Fork of Little Sandy River*~~ | ~~Green Branch to Headwaters~~ | ~~0.0-2.0~~ | ~~Elliott~~ |

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|---|---|---|---|
| ~~Laurel Creek of Little Sandy River*~~ | ~~Carter School Rd Bridge to Headwaters~~ | ~~7.6-14.7~~ | ~~Elliott, Rowan~~ |
| ~~LICKING RIVER BASIN~~ | | | |
| ~~Blackwater Creek of Licking River*~~ | ~~Eaton Creek to Greasy Fork~~ | ~~3.8-11.7~~ | ~~Morgan~~ |
| ~~Blanket Creek of Licking River~~ | ~~Mouth to Unidentified Tributary~~ | ~~0.0-1.9~~ | ~~Pendleton~~ |
| ~~Botts Fork of Brushy Fork of Licking River*~~ | ~~Mouth to Landuse Change~~ | ~~0.0-2.1~~ | ~~Menifee~~ |
| ~~Bowman Creek of Licking River~~ | ~~Mouth to Unidentified Tributary~~ | ~~0.0-6.0~~ | ~~Kenton~~ |
| ~~Brushy Fork of Meyers Creek*~~ | ~~Cave Run Lake Backwaters to Headwaters~~ | ~~0.7-5.6~~ | ~~Menifee~~ |
| ~~Brushy Fork of South Fork of Grassy Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-5.8~~ | ~~Pendleton~~ |
| ~~Bucket Branch of North Fork Licking River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.9~~ | ~~Morgan~~ |
| ~~Cedar Creek of Licking River~~ | ~~Mouth to North Branch of Cedar Creek~~ | ~~0.0-1.7~~ | ~~Robertson~~ |
| ~~Craney Creek of Licking River~~ | ~~Mouth to Headwaters~~ | ~~0.0-11.2~~ | ~~Morgan, Rowan~~ |
| ~~Devils Fork of North Fork Licking River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-8.5~~ | ~~Elliott, Morgan~~ |
| ~~Flour Creek of Licking River~~ | ~~Mouth to Unidentified Tributary~~ | ~~0.0-2.2~~ | ~~Pendleton~~ |
| ~~Grovers Creek of Kincaid Creek*~~ | ~~Kincaid Lake Backwaters to Unidentified Tributary~~ | ~~0.5-3.4~~ | ~~Bracken, Pendleton~~ |
| ~~Licking River~~ | ~~SR 211 to unnamed Rd off Slatey Point Rd~~ | ~~159.5-170.6~~ | ~~Bath, Rowan~~ |
| ~~North Fork Licking River*~~ | ~~Cave Run Lake Backwaters to Devils Fork~~ | ~~8.4-13.4~~ | ~~Morgan~~ |
| ~~Sawyers Fork of Cruises Creek~~ | ~~Mouth to Headwaters~~ | ~~0.0-3.3~~ | ~~Kenton~~ |
| ~~Slabcamp Creek of Craney Creek of Licking River~~ | ~~Mouth to Headwaters~~ | ~~0.0-3.7~~ | ~~Rowan~~ |
| ~~Slate Creek of Licking River~~ | ~~Mouth to Mill Creek~~ | ~~0.0-13.6~~ | ~~Bath~~ |
| ~~South Fork Grassy Creek of Grassy Creek of Licking River*~~ | ~~Mouth to Greasy Creek~~ | ~~0.0-19.8~~ | ~~Kenton, Pendleton~~ |
| ~~Unidentified Tributary of Shannon Creek of North Fork Licking River~~ | ~~Mouth to Headwaters~~ | ~~0.0-2.2~~ | ~~Mason~~ |
| ~~Welch Fork of Brushy Fork Licking River*~~ | ~~Mouth to First Road Crossing~~ | ~~0.0-1.0~~ | ~~Menifee~~ |
| ~~West Creek of Licking River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-9.8~~ | ~~Harrison, Robertson~~ |
| ~~KENTUCKY RIVER BASIN~~ | | | |
| ~~Backbone Creek of Sixmile Creek of Kentucky River*~~ | ~~Mouth to Scrabble Creek~~ | ~~0.0-1.65~~ | ~~Franklin, Henry, Shelby~~ |
| ~~Bear Branch of North Fork Kentucky River~~ | ~~Above Sediment Pond to Headwaters~~ | ~~0.3-1.2~~ | ~~Perry~~ |
| ~~Big Double Creek of Red Bird River*~~ | ~~Mouth to confluence of Left and Right Forks of Big Double Creek~~ | ~~0.0-4.4~~ | ~~Clay~~ |
| ~~Bill Branch of Laurel Fork Greasy Creek*~~ | ~~Mouth to Right Fork and Left Fork Creek~~ | ~~0.0-0.3~~ | ~~Leslie~~ |
| ~~Billey Fork of Millers Creek~~ | ~~Land Use Change to Headwaters~~ | ~~2.6-8.8~~ | ~~Lee, Elliott~~ |
| ~~Boyd Run of North Elkhorn Creek~~ | ~~Mouth to Cherry Run~~ | ~~0.0-0.9~~ | ~~Scott~~ |
| ~~Bill Oak Branch of Left Fork Buffalo Creek~~ | ~~Mouth to Headwaters~~ | ~~0.0-0.6~~ | ~~Owsley~~ |
| ~~Buffalo Creek of South Fork Kentucky River*~~ | ~~Mouth to Right Fork and Left Fork~~ | ~~0.0-1.6~~ | ~~Owsley~~ |
| ~~Bullskin Creek of Redbird River~~ | ~~Mouth to Headwaters~~ | ~~0.0–14.6~~ | ~~Clay~~ |
| ~~Cavanaugh Creek*~~ | ~~South Fork Station Camp Creek to Foxtown Rd~~ | ~~0.0-8.3~~ | ~~Jackson~~ |
| ~~Chester Creek of Middle Fork Red River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-2.8~~ | ~~Wolfe~~ |
| ~~Clear Creek of Kentucky River*~~ | ~~Mouth to East Fork Clear Creek~~ | ~~0.0-9.0~~ | ~~Woodford~~ |
| ~~Clemons Fork of Buckhorn Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-4.8~~ | ~~Breathitt~~ |
| ~~Coles Fork of Buckhorn Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-6.2~~ | ~~Breathitt~~ |
| ~~Craig Creek of Kentucky River*~~ | ~~Mouth to Unidentified Tributary~~ | ~~0.5-2.7~~ | ~~Woodford~~ |
| ~~Deep Ford Branch of Cutshin Creek~~ | ~~Above Pond to Headwaters~~ | ~~0.3-1.3~~ | ~~Leslie~~ |
| ~~Drennon Creek of Kentucky River*~~ | ~~Fivemile Creek to Town Branch~~ | ~~8.7-12.2~~ | ~~Henry~~ |
| ~~East Fork Indian Creek of Indian Creek of Red River*~~ | ~~West Fork Indian Creek to Headwaters~~ | ~~0.0-9.0~~ | ~~Menifee~~ |
| ~~Elisha Creek of Red Bird River*~~ | ~~Land Use Change (Residential) to the confluence of Right Fork and Middle Fork Elisha Creek~~ | ~~0.8-1.8~~ | ~~Leslie~~ |
| ~~Emily Run of Drennon Creek~~ | ~~Mouth to Unidentified Tributary~~ | ~~0.0-4.0~~ | ~~Henry~~ |
| ~~Evans Fork of Billey Fork of Millers Creek *~~ | ~~Mouth to Headwaters~~ | ~~0.0-3.0~~ | ~~Estill~~ |
| ~~Falling Rock Branch of Clemons Fork of Buckhorn Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-0.7~~ | ~~Breathitt~~ |
| ~~Gilberts Creek of Kentucky River~~ | ~~Mouth to Unidentified Tributary~~ | ~~0.0 to 2.6~~ | ~~Anderson~~ |
| ~~Gladie Creek of Red River*~~ | ~~Land Use Change to Long Branch~~ | ~~0.35 to 7.3~~ | ~~Menifee~~ |

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|---|---|---|---|
| ~~Goose Creek of South Fork Kentucky River~~ | ~~Mouth to Laurel Creek~~ | ~~0.0-9.1~~ | ~~Clay, Leslie~~ |
| ~~Griers Creek of Kentucky River*~~ | ~~Kentucky River Backwaters to Unidentified Tributary~~ | ~~0.1 to 3.5~~ | ~~Woodford~~ |
| ~~Grindstone Creek of Kentucky River*~~ | ~~Kentucky River Backwaters to Headwaters~~ | ~~0.1 to 1.9~~ | ~~Franklin~~ |
| ~~Hardwick Creek of Red River~~ | ~~Mouth to Little Hardwick Creek~~ | ~~0.0-3.25~~ | ~~Powell~~ |
| ~~Hell For Certain of Middle Fork Red River~~ | ~~Mouth to Big Fork~~ | ~~0.0-2.1~~ | ~~Leslie~~ |
| ~~Hines Creek of Kentucky River*~~ | ~~Kentucky River Backwaters to confluence with Unidentified Tributary~~ | ~~0.1 to 1.9~~ | ~~Madison~~ |
| ~~Honey Branch of Greasy Creek of Middle Fork Kentucky River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.35~~ | ~~Leslie~~ |
| ~~Hopper Cave Branch of Cavanaugh Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.8~~ | ~~Jackson~~ |
| ~~Indian Creek of Eagle Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0 to 5.4~~ | ~~Carroll~~ |
| ~~Indian Fork of Sixmile Creek of Kentucky River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-3.3~~ | ~~Shelby~~ |
| ~~John Carpenter Fork of Clemons Fork of Buckhorn Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.2~~ | ~~Breathitt~~ |
| ~~Joyce Fork of Cortland Fork~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.2~~ | ~~Owsley~~ |
| ~~Katies Creek of Red Bird River~~ | ~~Mouth to Headwaters~~ | ~~0.0-4.0~~ | ~~Clay~~ |
| ~~Laurel Fork of Left Fork Buffalo Creek of Buffalo Creek*~~ | ~~Cortland Fork to Big Branch~~ | ~~0.0-3.75~~ | ~~Owsley~~ |
| ~~Left Fork Big Double Creek of Kentucky River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.5~~ | ~~Clay~~ |
| ~~Line Fork of North Fork of Kentucky River*~~ | ~~Defeated Creek to Headwaters~~ | ~~12.2-28.6~~ | ~~Letcher~~ |
| ~~Little Middle Fork of Elisha Creek of Red Bird River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-0.75~~ | ~~Clay~~ |
| ~~Little Millseat Branch of Clemons Fork of Buckhorn Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.2~~ | ~~Breathitt~~ |
| ~~Little Sixmile Creek of Sixmile Creek of Kentucky River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-5.3~~ | ~~Henry~~ |
| ~~Little Sturgeon Creek of Sturgeon Creek~~ | ~~Mouth to Headwaters~~ | ~~0.0-3.0~~ | ~~Owsley~~ |
| ~~Low Gap Branch of Elk Creek~~ | ~~Mouth to Headwaters~~ | ~~0.0-0.8~~ | ~~Letcher~~ |
| ~~Lower Devil Creek of North Fork Kentucky River~~ | ~~Mouth to Headwaters~~ | ~~0.0-4.65~~ | ~~Lee~~ |
| ~~Lower Howard Creek of Kentucky River~~ | ~~Mouth to West Fork~~ | ~~0.0-2.7~~ | ~~Clark~~ |
| ~~Lulbegrud Creek of Red River~~ | ~~Mouth to Falls Branch~~ | ~~0.0-7.3~~ | ~~Clark, Powell~~ |
| ~~Middle Fork Kentucky River~~ | ~~Mouth to Upper Twin Creek~~ | ~~0.0-12.7~~ | ~~Lee, Owsley~~ |
| ~~Middle Fork Kentucky River*~~ | ~~Hurts Creek to Greasy Creek~~ | ~~75.6-85.8~~ | ~~Leslie~~ |
| ~~Middle Fork Red River~~ | ~~South Fork of Red River to Natural Bridge State Park Lake~~ | ~~1.8-8.5~~ | ~~Powell~~ |
| ~~Mikes Branch of Laurel Fork of Left Fork Buffalo Creek~~ | ~~Mouth to Headwaters~~ | ~~0.0-0.7~~ | ~~Owsley~~ |
| ~~Mill Creek of Kentucky River*~~ | ~~Upstream of Mouth to Headwaters~~ | ~~0.5-8.3~~ | ~~Owen~~ |
| ~~Millseat Branch of Clemons Fork of Buckhorn Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.85~~ | ~~Breathitt~~ |
| ~~Muddy Creek of Kentucky River*~~ | ~~Elliston, Kentucky to Viney Creek~~ | ~~13.8-20.65~~ | ~~Madison~~ |
| ~~Musselman Creek of Eagle Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-9.0~~ | ~~Grant~~ |
| ~~Red Bird River of South Fork Kentucky River~~ | ~~Mouth to Big Creek~~ | ~~0.0-15.3~~ | ~~Clay~~ |
| ~~Right Fork Buffalo Creek of Kentucky River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-11.75~~ | ~~Owsley~~ |
| ~~Right Fork Elisha Creek of Redbird River~~ | ~~Mouth to Headwaters~~ | ~~0.0-3.3~~ | ~~Leslie~~ |
| ~~Roaring Fork of Lewis Fork of Buckhorn Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-0.9~~ | ~~Breathitt~~ |
| ~~Rock Lick Creek of South Fork of Station Camp Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-9.6~~ | ~~Jackson~~ |
| ~~Sand Ripple Creek of Kentucky River*~~ | ~~Kentucky River Backwaters to Headwaters~~ | ~~0.1-3.9~~ | ~~Henry~~ |
| ~~Severn Creek of Kentucky River*~~ | ~~Kentucky River Backwaters to North Fork Severn Creek~~ | ~~1.35-3.0~~ | ~~Owen~~ |
| ~~Shaker Creek of Kentucky River~~ | ~~Near Mouth to Shawnee Run~~ | ~~0.1-1.4~~ | ~~Mercer~~ |
| ~~Shelly Rock Fork of Millseat Branch of Clemons Fork*~~ | ~~Mouth to Headwaters~~ | ~~0.0-0.6~~ | ~~Breathitt~~ |
| ~~Sixmile Creek of Kentucky River*~~ | ~~Little Sixmile Creek to Dam~~ | ~~7.1-15.3~~ | ~~Henry~~ |
| ~~South Fork Kentucky River~~ | ~~Mouth to Sexton Creek~~ | ~~0.0-27.8~~ | ~~Owsley~~ |
| ~~South Fork Red River~~ | ~~Mouth to Sandlick Fork~~ | ~~0.0-4.2~~ | ~~Powell~~ |
| ~~South Fork Station Camp Creek of Kentucky River*~~ | ~~Mouth to Rock Lick Creek~~ | ~~0.0-9.7~~ | ~~Jackson~~ |
| ~~Spruce Branch of Redbird River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.0~~ | ~~Clay~~ |
| ~~Station Camp Creek of Kentucky River*~~ | ~~Landuse Change to South Fork Station Camp Creek~~ | ~~18.0-22.8~~ | ~~Estill~~ |
| ~~Steeles Run of Elkhorn Creek~~ | ~~Mouth to Unidentified Tributary~~ | ~~0.0-4.2~~ | ~~Fayette~~ |
| ~~Steer Fork of War Fork of Station Camp Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-2.7~~ | ~~Jackson~~ |
| ~~Sturgeon Creek of Kentucky River*~~ | ~~Duck Fork to Little Sturgeon Creek~~ | ~~1.3-13.7~~ | ~~Lee, Owsley~~ |
| ~~Sugar Creek of Redbird River*~~ | ~~Landuse Change to Headwaters~~ | ~~0.6-5.4~~ | ~~Leslie~~ |

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|---|---|---|---|
| ~~Sulphur Lick Creek of Elkhorn Creek~~ | ~~Mouth to Headwaters~~ | ~~0.0-5.2~~ | ~~Franklin~~ |
| ~~Unidentified Tributary of Cawood Branch of Beech Fork*~~ | ~~Mouth to Headwaters~~ | ~~0.0-2.1~~ | ~~Leslie~~ |
| ~~Unidentified Tributary of Cedar Creek of Kentucky River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.4~~ | ~~Owen~~ |
| ~~Unidentified Tributary of Glenns Creek of Kentucky River*~~ | ~~Mouth to Headwaters~~ | ~~0.0 to 1.9~~ | ~~Woodford~~ |
| ~~Unidentified Tributary of Jacks Creek of Kentucky River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.15~~ | ~~Madison~~ |
| ~~Unidentified Tributary of Kentucky River*~~ | ~~Land Use Change to Headwaters~~ | ~~0.1-1.4~~ | ~~Franklin~~ |
| ~~Unidentified Tributary of Line Fork of North Fork Kentucky River*~~ ~~(LCW)~~ | ~~Mouth to Headwaters~~ | ~~0.0-0.6~~ | ~~Letcher~~ |
| ~~War Fork of Station Camp Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-13.8~~ | ~~Jackson~~ |
| ~~Watches Fork of Laurel Fork of Left Fork Buffalo Creek~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.0~~ | ~~Owsley~~ |
| ~~Wolfpen Creek of Red River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-3.6~~ | ~~Menifee~~ |
| ~~SALT RIVER BASIN~~ | | | |
| ~~Brashears Creek of Salt River~~ | ~~Guist Creek to Bullskin and Clear Creek~~ | ~~13.0-25.9~~ | ~~Shelby, Spencer~~ |
| ~~Cedar Creek of Salt River*~~ | ~~Mouth to Greens Branch~~ | ~~0.0-5.2~~ | ~~Bullitt~~ |
| ~~Chaplin River of Salt River*~~ | ~~Thompson Creek to Cornishville, KY~~ | ~~40.9-54.2~~ | ~~Washington~~ |
| ~~Doctors Fork of Chaplin River~~ | ~~Mouth to Begley Branch~~ | ~~0.0-3.8~~ | ~~Boyle~~ |
| ~~Guist Creek of Brashears Creek~~ | ~~Mouth to Jeptha Creek~~ | ~~0.0-15.7~~ | ~~Spencer~~ |
| ~~Harts Run of Wilson Creek of Rolling Fork Salt River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.8~~ | ~~Bullitt~~ |
| ~~Indian Creek of Thompson Creek of Chaplin River of Salt River~~ | ~~Mouth to Unidentified Tributary~~ | ~~0.0-0.9~~ | ~~Mercer~~ |
| ~~Lick Creek of Long Lick Creek of Beech Fork of Salt River*~~ | ~~Mouth to 0.1miles below Dam~~ | ~~0.0-4.0~~ | ~~Washington~~ |
| ~~Otter Creek of Rolling Fork of Salt River*~~ | ~~Landuse Change to confluence of East Fork and Middle Fork Otter Creek~~ | ~~1.7-2.9~~ | ~~Larue~~ |
| ~~Overalls Creek of Wilson Creek of Rolling Fork of Salt River*~~ | ~~Mouth to Headwaters of Middle Fork Overalls Creek~~ | ~~0.0-3.2~~ | ~~Bullitt~~ |
| ~~Salt Lick Creek of Rolling Fork of Salt River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-8.6~~ | ~~Larue, Marion~~ |
| ~~Sulphur Creek of Chaplin River*~~ | ~~Mouth to confluence of Cheese Lick and Brush Creek~~ | ~~0.0-10.0~~ | ~~Anderson, Mercer, Washington~~ |
| ~~Unidentified Tributary of Glens Creek of Chaplin River~~ | ~~Mouth to Headwaters~~ | ~~0.0-2.3~~ | ~~Washington~~ |
| ~~West Fork Otter Creek of Rolling Fork of Salt River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-5.1~~ | ~~Larue~~ |
| ~~Wilson Creek of Rolling Fork of Salt River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-18.4~~ | ~~Bullitt, Nelson~~ |
| ~~GREEN RIVER BASIN~~ | | | |
| ~~Beaverdam Creek of Green River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-14.5~~ | ~~Edmonson~~ |
| ~~Big Brush Creek of Green River~~ | ~~Brush Creek to Poplar Grove Branch~~ | ~~13.0-17.3~~ | ~~Green~~ |
| ~~Cane Run of Nolin River*~~ | ~~Nolin River Lake Backwaters to Headwaters~~ | ~~0.8-6.5~~ | ~~Hart~~ |
| ~~Caney Fork of Peter Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-6.7~~ | ~~Barren~~ |
| ~~Clifty Creek of Rough River*~~ | ~~Barton Run to Western Kentucky Parkway~~ | ~~7.3-17.2~~ | ~~Grayson~~ |
| ~~Clifty Creek of Wolf Lick Creek*~~ | ~~Little Clifty Creek to Sulphur Lick~~ | ~~7.6-13.4~~ | ~~Todd~~ |
| ~~East Fork Little Barren River*~~ | ~~Red Lick Creek to Flat Creek~~ | ~~18.9-20.7~~ | ~~Metcalfe~~ |
| ~~Elk Lick Creek~~ | ~~Duck Lick Creek to Barren Fork Creek and Edger Creek~~ | ~~3.6 to 11.8~~ | ~~Allen~~ |
| ~~Ellis Fork of Damron Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-3.2~~ | ~~Adair, Russell~~ |
| ~~Falling Timber Creek of Skaggs Creek*~~ | ~~Landuse Change to Headwaters~~ | ~~10.8-15.2~~ | ~~Barren, Metcalfe~~ |
| ~~Fiddlers Creek of North Fork Rough River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-5.9~~ | ~~Breckinridge~~ |
| ~~Forbes Creek of Buck Creek of East Fork Pond River*~~ | ~~Mouth to Unidentified Tributary~~ | ~~0.0-4.1~~ | ~~Christian~~ |
| ~~Gasper River of Barren River*~~ | ~~Clear Fork to Wiggington Creek~~ | ~~17.2-35.6~~ | ~~Logan, Warren~~ |
| ~~Goose Creek of Green River*~~ | ~~Mouth to Little Goose Creek~~ | ~~0.0-8.5~~ | ~~Casey, Russell~~ |
| ~~Green River~~ | ~~Downstream Mammoth Cave National Park Boundary to Lynn Camp Creek~~ | ~~185.0-250.3~~ | ~~Edmonson, Hart~~ |
| ~~Halls Creek of Rough River*~~ | ~~Unidentified Tributary to Headwaters~~ | ~~7.15-9.6~~ | ~~Ohio~~ |
| ~~Lick Creek of West Fork Drakes Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-10.2~~ | ~~Simpson~~ |
| ~~Linders Creek of Rough River*~~ | ~~Mouth to Sutzer Creek~~ | ~~0.0-7.9~~ | ~~Hardin~~ |
| ~~Little Beaverdam Creek of Green River*~~ | ~~Mouth to SR 743~~ | ~~0.0-11.65~~ | ~~Edmonson, Warren~~ |
| ~~Little Short Creek of Rough River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-3.1~~ | ~~Grayson~~ |
| ~~Lynn Camp Creek of Green River*~~ | ~~Mouth to Lindy Creek~~ | ~~0.0-8.5~~ | ~~Hart~~ |

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| ~~McFarland Creek of West Fork Pond River*~~ | ~~Grays Branch to Unidentified Tributary~~ | ~~1.5-5.0~~ | ~~Christian~~ |
| ~~Meeting Creek of Rough River*~~ | ~~Little Meeting Creek to Petty Branch~~ | ~~5.2-14.0~~ | ~~Grayson, Hardin~~ |
| ~~Muddy Creek of Caney Creek of Rough River*~~ | ~~Landuse Change to Headwaters~~ | ~~13.0-15.5~~ | ~~Ohio~~ |
| ~~North Fork Rough River*~~ | ~~Buffalo Creek to Reservoir Dam~~ | ~~22.1-26.9~~ | ~~Breckinridge~~ |
| ~~Peter Creek of Barren River*~~ | ~~Caney Fork to Dry Fork~~ | ~~11.6-18.5~~ | ~~Barren~~ |
| ~~Pond Run of Rough River*~~ | ~~Landuse Change to Headwaters~~ | ~~1.4-6.8~~ | ~~Breckinridge, Ohio~~ |
| ~~Puncheon Creek~~ | ~~Mouth to Tennessee State Line~~ | ~~0.0-3.8~~ | ~~Logan~~ |
| ~~Rough River*~~ | ~~Linders Creek to Vertrees Creek~~ | ~~138.0-149.4~~ | ~~Hardin~~ |
| ~~Russell Creek of Green River*~~ | ~~Mouth to Columbia WWTP~~ | ~~0.0-40.0~~ | ~~Green, Adair~~ |
| ~~Russell Creek of Green River*~~ | ~~Reynolds Creek to confluence with Hudson Creek and Mount Olive Creek~~ | ~~56.9-66.3~~ | ~~Adair, Russell~~ |
| ~~Sixes Creek of Indian Camp Creek*~~ | ~~Wild Branch to Headwaters~~ | ~~2.0-7.5~~ | ~~Ohio~~ |
| ~~Sulphur Branch of Alexander Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-3.0~~ | ~~Edmonson~~ |
| ~~Thompson Branch of West Fork Drakes Creek~~ | ~~Webb Branch to Tennessee State Line~~ | ~~0.3-1.5~~ | ~~Simpson~~ |
| ~~Trammel Creek of Drakes Creek*~~ | ~~Mouth to Tennessee State Line~~ | ~~0.0-30.6~~ | ~~Allen, Warren~~ |
| ~~Unidentified Tributary of Green River*~~ | ~~Landuse Change to Headwaters~~ | ~~1.7-3.2~~ | ~~Adair~~ |
| ~~Unidentified Tributary of White Oak Creek*~~ | ~~Hovious Rd Crossing to SR 76~~ | ~~0.4-2.9~~ | ~~Adair~~ |
| ~~West Fork Pond River*~~ | ~~Unidentified Tributary to East Branch Pond River~~ | ~~12.45-22.5~~ | ~~Christian~~ |
| ~~LOWER CUMBERLAND RIVER BASIN~~ | | | |
| ~~Crooked Creek of Cumberland River*~~ | ~~Energy Lake Backwaters to Headwaters~~ | ~~3.0-9.4~~ | ~~Trigg~~ |
| ~~Donaldson Creek of Cumberland River*~~ | ~~Craig Branch to Unidentified Tributary~~ | ~~3.2-7.2~~ | ~~Trigg~~ |
| ~~Elk Fork Red River of Cumberland River*~~ | ~~Tennessee State Line to Dry Branch~~ | ~~7.5-23.1~~ | ~~Todd~~ |
| ~~Sugar Creek of Cumberland River*~~ | ~~Lick Creek to Unidentified Tributary~~ | ~~2.2-6.9~~ | ~~Livingston~~ |
| ~~West Fork Red River of Cumberland River*~~ | ~~Tennessee State Line to Montgomery Creek~~ | ~~16.1-26.5~~ | ~~Christian~~ |
| ~~West Fork Red River~~ | ~~Tennessee State Line to Montgomery Creek~~ | ~~14.75-26.85~~ | ~~Christian~~ |
| ~~Whippoorwill Creek of Red River of Cumberland River*~~ | ~~Mouth to Vicks Branch~~ | ~~0.0-13.2~~ | ~~Logan~~ |
| ~~TENNESSEE RIVER BASIN~~ | | | |
| ~~Blood River of Kentucky Lake (Tennessee River)*~~ | ~~McCullough Fork to Tennessee State Line~~ | ~~15.15-18.7~~ | ~~Calloway~~ |
| ~~Clarks River of Tennessee River~~ | ~~Persimmon Slough to Middle Fork Creek~~ | ~~28.7-30.7~~ | ~~Marshall~~ |
| ~~Grindstone Creek of Kentucky Lake (Blood River of Tennessee River)*~~ | ~~Kentucky Lake Backwaters to Headwaters~~ | ~~0.7-2.9~~ | ~~Calloway~~ |
| ~~Panther Creek of Kentucky Lake (Blood River of Tennessee River)*~~ | ~~Kentucky Lake Backwaters to Headwaters~~ | ~~0.5-5.7~~ | ~~Calloway~~ |
| ~~Soldier Creek of West Fork Clarks River*~~ | ~~Mouth to South Fork of Soldier Creek~~ | ~~0.0-5.7~~ | ~~Marshall~~ |
| ~~Sugar Creek of Kentucky Lake (Tennessee River)*~~ | ~~Kentucky Lake Backwaters to Buzzard Roost Road~~ | ~~2.5-3.2~~ | ~~Calloway~~ |
| ~~Sugar Creek of West Fork Clarks River*~~ | ~~Mouth to Unnamed Reservoir~~ | ~~0.0-3.9~~ | ~~Graves~~ |
| ~~Trace Creek of West Fork Clarks River*~~ | ~~Mouth to Neeley Branch~~ | ~~0.0-3.35~~ | ~~Graves~~ |
| ~~Unidentified Tributary of Unidentified Tributary of Panther Creek of West Fork Clarks River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.7~~ | ~~Graves~~ |
| ~~West Fork Clarks River*~~ | ~~Soldier Creek to Duncan Creek~~ | ~~20.1-23.5~~ | ~~Graves~~ |
| ~~Wildcat Creek of Kentucky Lake (Blood River of Tennessee River)*~~ | ~~Ralph Wright Road Crossing to Headwaters~~ | ~~2.8-6.8~~ | ~~Calloway~~ |
| ~~TRADEWATER RIVER BASIN~~ | | | |
| ~~East Fork of Flynn Fork of Tradewater River*~~ | ~~Landuse Change to Headwaters~~ | ~~2.15-4.6~~ | ~~Caldwell~~ |
| ~~Piney Creek of Tradewater River*~~ | ~~Lake Beshear Backwaters to Headwaters~~ | ~~4.5-10.2~~ | ~~Caldwell, Christian~~ |
| ~~Sandlick Creek of Tradewater River*~~ | ~~Camp Creek to Headwaters~~ | ~~4.5-8.6~~ | ~~Christian~~ |
| ~~Tradewater River*~~ | ~~Dripping Springs Branch to Buntin Lake Dam~~ | ~~126.2-133.9~~ | ~~Christian~~ |
| ~~Unidentified Tributary of Piney Creek of Tradewater River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-2.9~~ | ~~Caldwell~~ |
| ~~Unidentified Tributary of Sandlick Creek of Tradewater River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.4~~ | ~~Christian~~ |
| ~~OHIO RIVER BASIN (Minor Tributaries)~~ | | | |
| ~~Ashbys Fork of Woolper Creek~~ | ~~Mouth to SR 20~~ | ~~0.0-3.7~~ | ~~Boone~~ |
| ~~Crooked Creek*~~ | ~~Rush Creek to City Lake Dam~~ | ~~18.1-26.4~~ | ~~Crittenden~~ |

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| ~~Double Lick Creek of Woolper Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-3.5~~ | ~~Boone~~ |
| ~~Garrison Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-4.85~~ | ~~Boone~~ |
| ~~Kinniconick Creek*~~ | ~~McDowell Creek to Headwaters~~ | ~~5.2-50.9~~ | ~~Lewis~~ |
| ~~Little South Fork of Big South Fork~~ | ~~Land Use Change to Headwaters~~ | ~~1.2-5.8~~ | ~~Boone~~ |
| ~~Middle Fork of Massac Creek*~~ | ~~Hines Road to Headwaters (Pond)~~ | ~~3.1-6.4~~ | ~~McCracken~~ |
| ~~Second Creek*~~ | ~~Ohio River Backwaters to Headwaters~~ | ~~0.4-2.9~~ | ~~Boone~~ |
| ~~Unidentified Tributary of Big Sugar Creek*~~ | ~~I-71 to Headwaters~~ | ~~1.0-1.8~~ | ~~Gallatin~~ |
| ~~Unidentified Tributary of Corn Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-2.3~~ | ~~Trimble~~ |
| ~~Unidentified Tributary of Massac Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.7~~ | ~~McCracken~~ |
| ~~West Fork Massac Creek*~~ | ~~SR 724 to Little Massac Creek~~ | ~~3.6-6.2~~ | ~~McCracken~~ |
| ~~Yellowbank Creek*~~ | ~~Ohio River Backwaters to Headwaters~~ | ~~2.0-12.0~~ | ~~Breckinridge~~ |
| ~~LAKE~~ | | | |
| ~~Metropolis~~ | ~~Entire Lake~~ | | ~~McCracken~~ |
| ~~MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)~~ | | | |
| ~~Jackson Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-3.0~~ | ~~Graves~~ |
| ~~Obion Creek*~~ | ~~Hurricane Creek to Little Creek~~ | ~~26.7-37.1~~ | ~~Hickman~~ |
| ~~Terrapin Creek*~~ | ~~Tennessee State Line to Confluence of East and West Forks~~ | ~~2.7-6.0~~ | ~~Graves~~ |
| ~~LAKES~~ | | | |
| ~~Murphy's Pond~~ | ~~Entire Pond and Preserve Area~~ | | ~~Hickman~~ |
| ~~Swan~~ | ~~Entire Lake~~ | | ~~Ballard~~ |
| ~~UPPER CUMBERLAND RIVER BASIN~~ | | | |
| ~~Bad Branch of Poor Fork Cumberland River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-3.0~~ | ~~Letcher~~ |
| ~~Bark Camp Creek of Cumberland River*~~ | ~~Mouth to Martins Fork~~ | ~~0.0-4.0~~ | ~~Whitley~~ |
| ~~Beaver Creek of Cumberland River*~~ | ~~Lake Cumberland Backwaters to confluence of Freeman Fork and Middle Fork~~ | ~~2.4-7.1~~ | ~~McCreary~~ |
| ~~Bee Lick Creek of Brushy Creek of Buck Creek~~ | ~~Mouth to Warren Branch~~ | ~~0.0-5.7~~ | ~~Pulaski~~ |
| ~~Brownies Creek of Cumberland River*~~ | ~~Blacksnake Branch to Headwaters~~ | ~~9.3-16.75~~ | ~~Bell, Harlan~~ |
| ~~Brush Creek of Roundstone Creek*~~ | ~~Wolf Creek to Reemergence of Sinking Creek~~ | ~~1.1-7.6~~ | ~~Rockcastle~~ |
| ~~Brushy Creek of Buck Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-16.5~~ | ~~Pulaski~~ |
| ~~Buck Creek of Cumberland River*~~ | ~~0.8 river mile upstream of confluence of Hurricane Creek to Lake Cumberland Backwaters~~ | ~~11.7-55.0~~ | ~~Lincoln, Pulaski~~ |
| ~~Bunches Creek of Cumberland River*~~ | ~~Mouth to confluence of Amos Falls Branch and Seminary Branch~~ | ~~0.0-3.3~~ | ~~Whitley~~ |
| ~~Cane Creek of Rockcastle River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-11.85~~ | ~~Laurel~~ |
| ~~Clear Creek of Roundstone Creek~~ | ~~Scaffold Cane Branch to Davis Branch~~ | ~~3.45-7.8~~ | ~~Rockcastle~~ |
| ~~Clifty Creek of Brushy Creek of Buck Creek~~ | ~~Mouth to Rocky Branch~~ | ~~0.0-2.7~~ | ~~Pulaski~~ |
| ~~Cogur Fork of Indian Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-7.95~~ | ~~McCreary~~ |
| ~~Cumberland River~~ | ~~Wild River Boundaries~~ | ~~549.65-566.1~~ | ~~McCreary, Whitley~~ |
| ~~Dog Slaughter Creek of Cumberland River*~~ | ~~Mouth to confluence of North Fork and South Fork Dog Slaughter Creek~~ | ~~0.05-1.15~~ | ~~Whitley~~ |
| ~~Eagle Creek of Cumberland River*~~ | ~~Mouth to Headwaters~~ | ~~0.05-6.75~~ | ~~McCreary~~ |
| ~~Fugitt Creek of Clover Fork Cumberland River*~~ | ~~Landuse Change to Headwaters~~ | ~~0.5-4.6~~ | ~~Harlan~~ |
| ~~Horse Lick Creek of Rockcastle River*~~ | ~~Mouth to Clover Bottom~~ | ~~0.0-12.3~~ | ~~Jackson, Rockcastle~~ |
| ~~Howards Creek of Illwill Creek of Wolf River*~~ | ~~Dale Hollow Reservoir Backwaters to Headwaters~~ | ~~0.6-4.6~~ | ~~Clinton~~ |
| ~~Indian Creek of Cumberland River*~~ | ~~Laurel Fork to Barren Fork~~ | ~~2.4-6.8~~ | ~~McCreary~~ |
| ~~Jackie Branch of Bark Camp Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.65~~ | ~~Whitley~~ |
| ~~Kettle Creek of Cumberland River~~ | ~~State line to Wells Creek~~ | ~~1.75-6.1~~ | ~~Monroe~~ |
| ~~Kilburn Fork of Indian Creek~~ | ~~Mouth to Headwaters~~ | ~~0.0-7.2~~ | ~~McCreary~~ |
| ~~Laurel Creek of Marsh Creek~~ | ~~Mouth to Laurel Creek Dam~~ | ~~0.0-9.0~~ | ~~McCreary~~ |
| ~~Laurel Fork of Clear Fork of Cumberland River*~~ | ~~Tennessee State Line to Tiny Branch~~ | ~~4.3-13.1~~ | ~~Whitley~~ |
| ~~Laurel Fork of Middle Fork of Rockcastle River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-12.3~~ | ~~Jackson~~ |
| ~~Left Fork of Fugitt Creek of Clover Fork Cumberland River~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.5~~ | ~~Harlan~~ |

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| ~~Little South Fork Cumberland River*~~ | ~~Lake Cumberland Backwaters to Langham Branch~~ | ~~4.4-35.5~~ | ~~McCreary, Wayne~~ |
| ~~Little White Oak Creek of White Oak Creek~~ | ~~Mouth to Headwaters~~ | ~~0.0-2.6~~ | ~~Laurel~~ |
| ~~Marsh Creek of Cumberland River*~~ | ~~Laurel Creek to Kentucky/Tennessee State Line~~ | ~~8.8-26.5~~ | ~~McCreary~~ |
| ~~Martins Fork Cumberland River~~ | ~~Rough Branch to Headwaters~~ | ~~27.2-32.7~~ | ~~Harlan~~ |
| ~~McFarland Creek of Cumberland River~~ | ~~Little McFarland Creek to Spring Branch~~ | ~~0.8-6.2~~ | ~~Monroe~~ |
| ~~Meshack Creek of Cumberland River~~ | ~~Mouth to Pitcock Branch~~ | ~~0.0-2.8~~ | ~~Monroe~~ |
| ~~Middle Fork Rockcastle River*~~ | ~~Mouth to confluence of Indian Creek and Laurel Fork~~ | ~~0.0-7.9~~ | ~~Jackson~~ |
| ~~Mud Camp Creek of Cumberland River*~~ | ~~Mouth to Collins Branch~~ | ~~0.0-1.2~~ | ~~Cumberland~~ |
| ~~Mud Camp Creek of Cumberland River*~~ | ~~Unidentified Tributary to Headwaters~~ | ~~3.8-8.8~~ | ~~Cumberland, Monroe~~ |
| ~~Otter Creek of Cumberland River~~ | ~~Lake Cumberland Backwaters to Carpenter Fork~~ | ~~14.0-22.1~~ | ~~Wayne~~ |
| ~~Poor Fork Cumberland River*~~ | ~~Franks Creek to Headwaters~~ | ~~42.1-52.4~~ | ~~Letcher~~ |
| ~~Presley House Branch of Poor Fork Cumberland River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.5~~ | ~~Letcher~~ |
| ~~Puncheoncamp Branch of Rock Creek of Big South Fork Cumberland River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.85~~ | ~~McCreary~~ |
| ~~Rock Creek of Big South Fork Cumberland River*~~ | ~~White Oak Creek to Tennessee State Line~~ | ~~4.0-21.5~~ | ~~McCreary~~ |
| ~~Rockcastle River~~ | ~~Wild River Boundaries~~ | ~~8.95-54.7~~ | ~~Laurel, Pulaski~~ |
| ~~Shillalah Creek of Clear Fork of Yellow Creek*~~ | ~~Mouth to Headwaters~~ | ~~0.0-5.5~~ | ~~Bell~~ |
| ~~Sinking Creek of Rockcastle River*~~ | ~~Mouth to White Oak Creek~~ | ~~0.0-9.9~~ | ~~Laurel~~ |
| ~~Sulphur Creek of Wolf River of Obey River*~~ | ~~Dale Hollow Reservoir Backwaters to Headwaters~~ | ~~1.7-5.1~~ | ~~Clinton~~ |
| ~~South Fork of Dog Slaughter Creek of Cumberland River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-4.6~~ | ~~Whitley~~ |
| ~~South Fork Rockcastle River~~ | ~~Mouth to White Oak Creek~~ | ~~0.0-5.8~~ | ~~Laurel~~ |
| ~~Unidentified Tributary of Cane Creek of Rockcastle River~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.2~~ | ~~Laurel~~ |
| ~~Unidentified Tributary (across from Hemlock Grove) of Rock Creek of Big South Fork Cumberland River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.3~~ | ~~McCreary~~ |
| ~~Unidentified Tributary (RMI 17.0 of Rock Creek) of Rock Creek of Big South Fork Cumberland River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-1.2~~ | ~~McCreary~~ |
| ~~Watts Branch of Rock Creek of South Fork Cumberland River*~~ | ~~Mouth to Headwaters~~ | ~~0.0-2.6~~ | ~~McCreary~~ |
| ~~Watts Creek of Cumberland River*~~ | ~~Camp Blanton Reservoir to Headwaters~~ | ~~2.4-4.4~~ | ~~Harlan~~] |

*Waterbodies in the cabinet's reference reach network

(a) Categorization criteria. A surface water shall be categorized as an exceptional water if the surface water:

1. Is designated as a Kentucky Wild River and is not categorized as an outstanding national resource water;

2. Is designated as an outstanding state resource water as established in 401 KAR 10:031, Section 8(1)(a)1. and 2. and Section 8(1)(b);

3. Contains a:

a. Fish community that is rated "excellent" by the use of the Index of Biotic Integrity included in Development and Application of the Kentucky Index of Biotic Integrity (KIBI), 2003; or

b. Macroinvertebrate community that is rated "excellent" by the Macroinvertebrate Bioassessment Index included in "The Kentucky Macroinvertebrate Bioassessment Index," 2003; or

4. Is in the cabinet's reference reach network.

(b) Implementation procedure. The implementation procedure for exceptional water shall be as established in subsection (3)(b) of this section.

(3) High quality water.

(a) Categorization criteria.

1. A surface water shall be categorized as high quality water if the surface water is not listed as an outstanding national resource water or an exceptional water in Table 1 or 2 of this section and if the surface water does not meet the criteria for impaired water as established in subsection (4)(a) of this section.

2. A surface water shall be categorized as a high quality water if the surface water is listed as an outstanding state resource water in 401 KAR 10:026 and is not listed as an outstanding national resource water in Table 1 or an exceptional water in Table 2 of this section.

(b) Implementation procedure. Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. A KPDES permit application for a new or expanded discharge into a high quality or exceptional water shall be subject to the provisions of this paragraph, except:

1.a. The renewal of a KPDES permit that does not authorize pollutant loading to the receiving stream in excess of that previously authorized;

b. An increase in pollutant loading within the limits previously approved by the KPDES permit; or

c. A new or expanded discharge that the applicant demonstrates:

(i) Shall not consume more than ten (10) percent of the available assimilative capacity of the receiving stream outside of a designated mixing zone or zone of initial dilution for each new or increased pollutant in the discharge; and

(ii) The cumulative impact of this category of discharges shall not consume more than ten (10) percent of the available assimilative capacity of the receiving stream outside of a designated mixing zone or zone of initial dilution.

2. The activities identified in clauses a. through d. of this subparagraph shall constitute compliance with the alternatives and socioeconomic analysis requirements if addressed in the manner established in this subparagraph rather than as established in subparagraph 1.c. of this paragraph, unless the permittee chooses to satisfy applicable antidegradation requirements pursuant to subparagraph 3. of this paragraph.

a. The cabinet may, upon receipt of a notice of intent to be covered under a general permit, require additional analyses or other information if necessary to comply with antidegradation requirements. A general permit issued pursuant to 401 KAR 5:050 through 5:080 shall be compliant with the alternatives and socioeconomic analysis requirements if:

(i) The activity permitted by the general permit may result in a lowering of water quality, the cabinet shall describe in the Fact

Sheet how the general permit complies with the alternatives analysis, and socioeconomic demonstration requirements of subparagraph 1.c. of this paragraph upon each general permit issuance;

(ii) The requirements and conditions in a general permit will prevent a lowering of water quality, the cabinet shall describe in the Fact Sheet how the general permit complies with the antidegradation policy established in 401 KAR 10:029, Section 1; and

(iii) The cabinet notifies the public of an activity granted coverage under a general permit on the cabinet's Web page, which shall include the facility name, location, and receiving water.

b. The approval of a POTW's regional facility plan pursuant to 401 KAR 5:006 shall constitute compliance with the alternatives analysis and socioeconomic demonstration for a regional facility.

c. An antidegradation review shall not be required for maintenance of an existing highway facility. A new or expanded discharge associated with a project identified in the Kentucky Transportation Cabinet's six (6) year road plan~~,~~ as established in KRS 176.430 shall satisfy the:

(i) Alternatives analysis for lowering water quality requirement if an alternatives analysis for the project has been submitted; and

(ii) Socioeconomic demonstration requirement if the project has been approved by the General Assembly and included in the Kentucky Transportation Cabinet's six (6) year road plan and evaluated pursuant to the provisions of KRS 176.430(4)(i).

d. An individual MS4 permit issued pursuant to 401 KAR 5:050 through 5:080 shall be compliant with the alternatives and socioeconomic analysis requirements if the:

(i) Activity permitted by the MS4 permit may result in a lowering of water quality, the cabinet shall describe in the Fact Sheet how the MS4 permit complies with the alternatives analysis and socioeconomic demonstration requirements of subparagraph 3.a. and b. of this paragraph; and

(ii) Requirements and conditions in the MS4 permit will prevent a lowering of water quality, the cabinet shall describe in the Fact Sheet how the MS4 permit complies with the antidegradation policy established in 401 KAR 10:029, Section 1.

3. An application for a KPDES permit subject to this paragraph shall contain information demonstrating that the lowering of water quality is necessary to accommodate important economic or social development in the area in which the water is located.

a. The socioeconomic demonstration shall consider:

(i) The boundaries of the affected community;

(ii) The potential effect on employment, including a comparison of local unemployment rates and state and national unemployment rates;

(iii) The potential effect on median household income levels, including a comparison of the present median household income level, projected median household income level, and number of households affected in the defined community;

(iv) The potential effect on tax revenues, including current tax revenues in the affected community compared to projected increase in tax revenues generated by the permitted project;

(v) The potential effect of the facility on the environment and public health; and

(vi) Other potential economic or social effect to the community that the applicant includes in the application.

b. The alternatives analysis shall consider:

(i) Pollution prevention measures, such as changes in plant processes, source reductions, or substitution with less toxic substances;

(ii) The use of best management practices to minimize impacts;

(iii) Recycle or reuse of wastewater, waste by-products, or production materials and fluids;

(iv) Application of water conservation methods;

(v) Alternative or enhanced treatment technology;

(vi) Improved operation and maintenance of existing treatment systems;

(vii) Seasonal or controlled discharge options;

(viii) Land application or infiltration to capture pollutants and reduce surface runoff, on-site treatment, or alternative discharge locations; and

(ix) Discharge to other treatment facilities.

c. Information required pursuant to this subparagraph shall be submitted on the Socioeconomic Demonstration and Alternatives Analysis form.

4. A permit applicant who has failed to demonstrate the necessity and social or economic development importance for lowering water quality shall not receive a permit unless:

a. The applicant demonstrates, through a revised submission, the necessity for lowering revised water quality in accordance with subparagraph 3. of this paragraph; or

b. The applicant demonstrates that the discharge can meet the requirements established in subparagraph 1.c. of this paragraph.

5. A permit applicant who demonstrates the necessity and social or economic development importance for lowering water quality shall meet the requirements of the KPDES program, 401 KAR 5:050 through 5:080.

6. The cabinet's determination shall be documented in the permit Fact Sheet and included in the administrative record for the permit or action.

(4) Impaired water.

(a) Categorization criteria. A surface water categorized as impaired for applicable designated uses shall be a water identified pursuant to 33 U.S.C. 1315(b).

1. **A** surface water[~~categorized as impaired shall be~~] assessed by the cabinet as not fully supporting **an[~~any~~]** applicable designated **use[~~uses~~]** shall be categorized as impaired **for the purposes of this administrative regulation, except as established in *subparagraph 2. of this paragraph*[~~*paragraph (a)2. of this subsection*~~]**.

2. A surface water shall not be categorized as impaired water for the purposes of this administrative regulation if the surface water is listed:

a. As an outstanding state resource water in 401 KAR 10:026;[~~.~~]

b. As an exceptional water in 401 KAR 10:030; or

c. Only as mercury or methylmercury impaired for fish consumption.[~~3. A surface water shall not be categorized as impaired for the purposes of this administrative regulation if the surface water is listed only as mercury impaired for fish consumption.~~]

(b) Implementation procedure.

1. All existing uses shall be protected and the level of water quality necessary to protect those existing uses shall be assured in impaired water.

2. The process to allow a discharge into an impaired water and to assure protection of the water shall be regulated by the requirements in the Kentucky Pollution Discharge Elimination System Program, 401 KAR 5:050 through 5:080[~~5:050-5:080~~].

Section 2. Procedure for Recategorizing Water. This section shall apply to the recategorization of surface water to outstanding national resource water and exceptional water. The redesignation of water to outstanding state resource water shall be governed by the procedures in 401 KAR 10:026. (1) The cabinet may propose to recategorize certain water to outstanding national resource water and exceptional water if the water meets the criteria set forth in Section 1(1)(a) or (2)(a) of this administrative regulation.

(a) If the cabinet proposes to recategorize these waters, it shall provide notice and an opportunity for public hearing.

(b) The cabinet shall provide the documentation requirements of this section for those surface waters it proposes to recategorize.

(2) A person may request recategorization of a surface water to an outstanding national resource water or exceptional water by filing a petition with the cabinet.

(a) The petition shall include the name and address of the petitioner and the information and documentation necessary to recategorize the particular water as required by subsection (4) of this section.

(b) The petitioner shall have the burden of proof that the recategorization is appropriate.

(c) The cabinet shall provide notice of the petition and an opportunity for a public hearing.

(d) The cabinet shall review the petition, supporting documentation, and any comments received from the public to

determine if the proposed water qualifies for recategorization.

(e) The cabinet shall document the determination to grant or deny recategorization as a result of a petition, and shall provide a copy of the decision to the petitioner and other interested parties.

(3) If a water is to be recategorized, the cabinet shall publish notice of the recategorization.

(a) A permit issued after the date of publication shall be issued with limitations based on the new category.

(b) When the cabinet reviews its water quality standards pursuant to the provisions of Section 303 of the Clean Water Act, 33 U.S.C. 1313, the cabinet shall propose to have all recategorized water promulgated as an amendment to this administrative regulation.

(4) The following information, documentation, and data shall support a petition for recategorization:

(a) A petition for outstanding national resource water shall include:

1. A USGS 7.5 minute topographic map or its equivalent showing those surface waters to be recategorized including a description consisting of a river mile index with any existing and proposed discharge points;

2. Existing uses and water quality data for the surface water for which the recategorization is proposed. If adequate data are unavailable, additional studies shall be required by the cabinet;

3. Descriptions of general land uses and specific land uses adjacent to the surface water for which the recategorization is proposed;

4. The existing and designated uses of the water upstream and downstream of the proposed recategorized water;

5. General physical characteristics of the surface water including width, depth, bottom composition, and slope;

6. The frequency of occasions when there is no natural flow in the surface water and the $7Q_{10}$ and harmonic mean flow values for the surface water and adjacent surface waters;

7. An assessment of the existing and potential aquatic life habitat in the surface water under consideration and the adjacent upstream surface waters. The existing aquatic life shall be documented including the occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique native biota;

8. A documented rationale as to why the water qualify for the recategorization; and

9. The rationale used to support the national significance of the water.

(b) A petition for exceptional water shall include:

1. A United States Geological Survey 7.5 minute topographic map or its equivalent showing the surface water to be recategorized including a description consisting of a river mile index with existing and proposed discharge points;

2. Descriptions of general land uses, including:

a. Mining;

b. Agriculture;

c. Recreation;

d. Low, medium, and high density residential, commercial, or industrial uses; and

e. Specific land uses adjacent to the surface water for which the recategorization is proposed;

3. The frequency of occasions when there is no natural flow in the surface water and the $7Q_{10}$ and annual mean flow values for the surface water; and

4. Fish or benthic macroinvertebrate collection data and an Index of Biotic Integrity or Macroinvertebrate Bioassessment Index calculation from a waterbody if criteria specified in Section 1(2)(a)3 of this administrative regulation are utilized.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Development and Application of the Kentucky Index of Biotic Integrity (KIBI)", 2003, Kentucky Division of Water, Environmental and Public Protection Cabinet;

(b) "The Kentucky Macroinvertebrate Bioassessment Index", 2003, Kentucky Division of Water, Environmental and Public Protection Cabinet; and

(c) "Socioeconomic Demonstration and Alternative Analysis", KPDES Form SDAA, DEP Form 7032, May 2019[~~April 2~~009].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(a) The Socioeconomic Demonstration and Alternative Analysis, KPDES Form SDAA, DEP Form 7032, May 2019, is also available on the division's Web site at https://eec.ky.gov/Environmental-Protection/Water/PermitCert/KPDES/Pages/default.aspx.

(b) "Development and Application of the Kentucky Index of Biotic Integrity" and "Kentucky Macroinvertebrate Bioassessment Index" is also available on the division's Web site at https://eec.ky.gov/Environmental-Protection/Water/QA/Pages/default.aspx.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 10 a.m.

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**ENERGY AND ENVIRONMENT CABINET**
**Department for Environmental Protection**
**Division of Water**
**(As Amended at ARRS, November 12, 2019)**

**401 KAR 10:031. Surface water standards.**

RELATES TO: KRS 146.200 through 146.360[~~146.200-146.360~~], 146.410 through 146.535[~~146.410-146.535~~], 146.550 through 146.570[~~146.550-146.570~~], 146.600 through 146.619[~~146.600-146.619~~], 146.990, 224.1-010, 224.1-400, 224.16-050, 224.16-070, 224.70-100 through 224.70-140[~~224.70-100-224.70-140~~], 224.71-100 through 224.71-145[~~224.71-100-224.71-145~~], 224.73-100 through 224.73-120[~~224.73-100-224.73-120.~~]

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. Part 131, 16 U.S.C. 1271 through 1287[~~1271-1287~~], 1531 through 1544[~~1531-1544~~], 33 U.S.C. 1311, 1313, 1314, 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:030 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes water quality standards that consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses. These water quality criteria[~~standards~~] are minimum requirements that apply to all surface waters in the Commonwealth of Kentucky in order to maintain and protect them for designated uses. These water quality standards are subject to periodic review and revision in accordance with the Clean Water Act, 33 U.S.C. 1251-1387, 40 C.F.R. 131, and KRS Chapter 224.

Section 1. Nutrients Criterion. Nutrients shall not be elevated in a surface water to a level that results in a eutrophication problem.

Section 2. Minimum Criteria Applicable to All Surface Waters. (1) The minimum water quality criteria established in this administrative regulation shall be applicable to all surface waters including mixing zones, with the exception that toxicity to aquatic life in mixing zones shall be subject to the provisions of 401 KAR 10:029, Section 4. Surface waters shall not be aesthetically or otherwise degraded by substances that:

(a) Settle to form objectionable deposits;

(b) Float as debris, scum, oil, or other matter to form a

nuisance;

(c) Produce objectionable color, odor, taste, or turbidity;

(d) Injure or are chronically or acutely toxic to or produce adverse physiological or behavioral responses in humans, animals, fish, and other aquatic life;

(e) Produce undesirable aquatic life or result in the dominance of nuisance species; or

(f) Cause fish flesh tainting.

(2) The concentration of phenol shall not exceed 300 μg/L as an instream value.

(3) The water quality criteria for the protection of human health related to fish consumption in Table 1 of Section 6 of this administrative regulation shall apply to all surface water at the edge of the assigned mixing zones except for those points where water is withdrawn for domestic water supply use.

(a) The criteria are established to protect human health regarding the consumption of fish tissue and shall not be exceeded.

(b) For those substances associated with a cancer risk, an acceptable risk level of not more than one (1) additional cancer case in a population of 1,000,000 people, or 1 x $10^{-6}$ shall be utilized to establish the allowable concentration.

Section 3. Use Designations and Associated Criteria. (1) Surface waters may be designated as having one (1) or more legitimate uses established in 401 KAR 10:026 and associated criteria protective of those uses. Nothing in this administrative regulation shall be construed to prohibit or impair the legitimate beneficial uses of these waters. The criteria in Sections 2, 4, 6, and 7 of this administrative regulation represent minimum conditions necessary to:

(a) Protect surface waters for the indicated designated use; and

(b) Protect human health regarding fish consumption.

(2) On occasion, surface water quality may be outside of the limits established to protect designated uses because of natural conditions. If this occurs during periods when stream flows are below the flow that is used by the cabinet to establish effluent limitations for wastewater treatment facilities, a discharger shall not be considered a contributor to instream violations of water quality standards, if treatment results in compliance with permit requirements.

(3) Stream flows for water quality-based permits. The following stream flows shall be utilized if deriving KPDES permit limitations to protect surface waters for the listed uses and purposes:

(a) Aquatic life protection shall be $7Q_{10}$;

(b) Water-based recreation protection shall be $7Q_{10}$;

(c) Domestic water supply protection shall be determined at points of withdrawal as:

1. The harmonic mean for cancer-linked substances; and

2. $7Q_{10}$ for noncancer-linked substances;

(d) Human health protection regarding fish consumption and for changes in radionuclides shall be the harmonic mean; and

(e) Protection of aesthetics shall be $7Q_{10}$.

Section 4. Aquatic Life. (1) Warm water aquatic habitat. The following parameters and associated criteria shall apply for the protection of productive warm water aquatic communities, fowl, animal wildlife, arboreous growth, agricultural, and industrial uses:

(a) Natural alkalinity as $CaCO_3$ shall not be reduced by more than twenty-five (25) percent.

1. If natural alkalinity is below twenty (20) mg/L $CaCO_3$, there shall not be a reduction below the natural level.

2. Alkalinity shall not be reduced or increased to a degree that may adversely affect the aquatic community;

(b) pH shall not be less than six and zero-tenths (6.0) nor more than nine and zero-tenths (9.0) and shall not fluctuate more than one and zero-tenths (1.0) pH unit over a period of twenty-four (24) hours;

(c) Flow shall not be altered to a degree that will adversely affect the aquatic community;

(d) Temperature shall not exceed thirty-one and seven-tenths (31.7) degrees Celsius (eighty-nine (89) degrees Fahrenheit).

1. The normal daily and seasonal temperature fluctuations that existed before the addition of heat due to other than natural causes shall be maintained.

2. The cabinet may determine allowable surface water temperatures on a site-specific basis utilizing available data that shall be based on the effects of temperature on the aquatic biota that utilize specific surface waters of the commonwealth and that may be affected by person-induced temperature changes.

3.[~~a.~~] Effects on downstream uses shall also be considered in determining site-specific temperatures.[~~b. Values in the following table are guidelines for surface water temperature.~~]

| ~~Month/Date~~ | ~~Period Average~~ | | ~~Instantaneous Maximum~~ | |
|---|---|---|---|---|
| | ~~(°F)~~ | ~~(°C)~~ | ~~(°F)~~ | ~~(°C)~~ |
| ~~January 1-31~~ | ~~45~~ | ~~7~~ | ~~50~~ | ~~10~~ |
| ~~February 1-29~~ | ~~45~~ | ~~7~~ | ~~50~~ | ~~10~~ |
| ~~March 1-15~~ | ~~51~~ | ~~11~~ | ~~56~~ | ~~13~~ |
| ~~March 16-31~~ | ~~54~~ | ~~12~~ | ~~59~~ | ~~15~~ |
| ~~April 1-15~~ | ~~58~~ | ~~14~~ | ~~64~~ | ~~18~~ |
| ~~April 16-30~~ | ~~64~~ | ~~18~~ | ~~69~~ | ~~21~~ |
| ~~May 1-15~~ | ~~68~~ | ~~20~~ | ~~73~~ | ~~23~~ |
| ~~May 16-31~~ | ~~75~~ | ~~24~~ | ~~80~~ | ~~27~~ |
| ~~June 1-15~~ | ~~80~~ | ~~27~~ | ~~85~~ | ~~29~~ |
| ~~June 16-30~~ | ~~83~~ | ~~28~~ | ~~87~~ | ~~31~~ |
| ~~July 1-31~~ | ~~84~~ | ~~29~~ | ~~89~~ | ~~32~~ |
| ~~August 1-31~~ | ~~84~~ | ~~29~~ | ~~89~~ | ~~32~~ |
| ~~September 1-15~~ | ~~84~~ | ~~29~~ | ~~87~~ | ~~31~~ |
| ~~September 16-30~~ | ~~82~~ | ~~28~~ | ~~86~~ | ~~30~~ |
| ~~October 1-15~~ | ~~77~~ | ~~25~~ | ~~82~~ | ~~28~~ |
| ~~October 16-31~~ | ~~72~~ | ~~22~~ | ~~77~~ | ~~25~~ |
| ~~November 1-30~~ | ~~67~~ | ~~19~~ | ~~72~~ | ~~22~~ |
| ~~December 1-31~~ | ~~52~~ | ~~11~~ | ~~57~~ | ~~14~~ |

4.[~~3.~~] A successful demonstration concerning thermal discharge limits carried out pursuant to Section 316(a) of the Clean Water Act, 33 U.S.C. 1326, shall constitute compliance with the temperature requirements of this subsection. A successful demonstration assures the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife in or on the water into which the discharge is made;

(e) Dissolved oxygen.

1.a. Dissolved oxygen shall be maintained at a minimum concentration of five and zero-tenths (5.0) mg/L as a twenty-four (24) hour average in water with WAH use.[;]

b. The instantaneous minimum shall not be less than four and zero-tenths (4.0) mg/L in water with WAH use.

2. The dissolved oxygen concentration shall be measured at mid-depth in waters having a total depth of ten (10) feet or less and at representative depths in other waters;

(f) Total dissolved solids or specific conductance. Total dissolved solids or specific conductance shall not be changed to the extent that the indigenous aquatic community is adversely affected;

(g) Total suspended solids. Total suspended solids shall not be changed to the extent that the indigenous aquatic community is adversely affected;

(h) Settleable solids. The addition of settleable solids that may alter the stream bottom so as to adversely affect productive aquatic communities shall be prohibited;

(i) Ammonia. The concentration of the un-ionized form shall not be greater than 0.05 mg/L at any time instream after mixing. Un-ionized ammonia shall be determined from values for total ammonia-N, in mg/L, pH and temperature, by means of the following equation:

$Y = 1.2\ (\text{Total ammonia-N})/(1 + 10^{pKa-pH})$

$pk_a = 0.0902 + (2730/(273.2 + T_c))$

Where:

$T_c$ = temperature, degrees Celsius.

Y = un-ionized ammonia (mg/L);

(j) Toxics.

1. The allowable instream concentration of toxic substances, or

whole effluents containing toxic substances, which are noncumulative or non-persistent[~~nonpersistent~~] with a half-life of less than ninety-six (96) hours, shall not exceed:

a. One-tenth (0.1) of the ninety-six (96) hour median lethal concentration ($LC_{50}$) of representative indigenous or indicator aquatic organisms; or

b. A chronic toxicity unit of 1.00 utilizing the twenty-five (25) percent inhibition concentration, or $IC_{25}$[~~$LC_{25}$~~].

2. The allowable instream concentration of toxic substances, or whole effluents containing toxic substances, which are bioaccumulative or persistent, including pesticides, if not specified elsewhere in this section, shall not exceed:

a. 0.01 of the ninety-six (96) hour median lethal concentration ($LC_{50}$) of representative indigenous or indicator aquatic organisms; or

b. A chronic toxicity unit of 1.00 utilizing the $IC_{25}$.

3. In the absence of acute criteria for pollutants listed in Table 1 of Section 6 of this administrative regulation, for other substances known to be toxic but not listed in this administrative regulation, or for whole effluents that are acutely toxic, the allowable instream concentration shall not exceed the $LC_1$ or one-third (1/3) $LC_{50}$ concentration derived from toxicity tests on representative indigenous or indicator aquatic organisms or exceed three-tenths (0.3) acute toxicity units.

4. If specific application factors have been determined for a toxic substance or whole effluent such as an acute to chronic ratio or water effect ratio, the specific application factors may be used instead of the one-tenth (0.1) and 0.01 factors listed in this subsection upon demonstration by the applicant that the application factors are scientifically defensible.

5. Allowable instream concentrations for specific pollutants for the protection of warm water aquatic habitat are listed in Table 1 of Section 6 of this administrative regulation. These concentrations are based on protecting aquatic life from acute and chronic toxicity and shall not be exceeded; and

(k) Total residual chlorine. Instream concentrations for total residual chlorine shall not exceed an acute criteria value of nineteen (19) μg/L or a chronic criteria value of eleven (11) μg/L.

(2) Cold water aquatic habitat. The following parameters and criteria are for the protection of productive cold water aquatic communities and streams that support trout populations, whether self-sustaining or reproducing, on a year-round basis. The criteria adopted for the protection of warm water aquatic life also apply to the protection of cold water habitats with the following additions:

(a) Dissolved oxygen.

1. A minimum concentration of six and zero-tenths (6.0) mg/L as a twenty-four (24) hour average and five and zero-tenths (5.0) mg/L as an instantaneous minimum shall be maintained.

2. In lakes and reservoirs that support trout, the concentration of dissolved oxygen in waters below the epilimnion shall be kept consistent with natural water quality; and

(b) Temperature. Water temperature shall not be increased through human activities above the natural seasonal temperatures.

Section 5. Domestic Water Supply Use. Maximum allowable in-stream concentrations for specific substances, to be applicable at the point of withdrawal, as established in 401 KAR 10:026, Section 5(2)(b), Table B, for use for domestic water supply from surface water sources are specified in Table 1 of Section 6 of this administrative regulation and shall not be exceeded.

Section 6. Pollutants. (1) Allowable instream concentrations of pollutants are listed as water column values in Table 1 of this section unless otherwise indicated.

Table 1

| Pollutant | CAS[1] Number | Water Quality Criteria μg/L[2][~~mg/L[2]~~] | | | |
|---|---|---|---|---|---|
| | | Human Health: | | Warm Water Aquatic Habitat[3]: | |
| | | DWS[4] | Fish[5] | Acute[6] | Chronic[7] |
| Acenaphthene | 83-32-9[~~83329~~] | 670 | 990 | - | - |
| Acrolein | 107-02-8[~~107028~~] | 190 | 6 | 3 | 3 |
| Acrylonitrile | 107-13-1[~~107131~~] | 0.051 | 0.25 | - | - |
| Aldrin | 309-00-2[~~309002~~] | 0.000049 | 0.000050 | 3.0 | - |
| alpha-BHC | 319-84-6[~~319846~~] | 0.0026 | 0.0049 | - | - |
| alpha-Endosulfan | 959-98-8[~~959988~~] | 62 | 89 | 0.22 | 0.056 |
| Anthracene | 120-12-7[~~120127~~] | 8,300 | 40,000 | - | - |
| Antimony | 744-03-60[~~7440360~~] | 5.6 | 640 | - | - |
| Arsenic | 7440-38-2[~~7440382~~] | 10.0 | - | 340 | 150 |
| Asbestos | 1332-21-4[~~1332214~~] | 7 million fibers/L | - | - | - |
| Barium | 7440-39-3[~~7440393~~] | 1,000 | - | - | - |
| Benzene | 71-43-2[~~71432~~] | 2.2 | 51 | - | - |
| Benzidine | 92-87-5[~~92875~~] | 0.000086 | 0.00020 | - | - |
| Benzo(a)anthracene | 56-55-3[~~56553~~] | 0.0038 | 0.018 | - | - |
| Benzo(a)pyrene | 50-32-8[~~50328~~] | 0.0038 | 0.018 | - | - |
| Benzo(b)fluoranthene | 205-99-2[~~205992~~] | 0.0038 | 0.018 | - | - |
| Benzo(k)fluoranthene | 207-08-9[~~207089~~] | 0.0038 | 0.018 | - | - |
| Beryllium | 7440-41-7[~~7440417~~] | 4 | - | - | - |
| Beta-BHC | 319-85-7[~~319857~~] | 0.0091 | 0.017 | - | - |
| Beta-Endosulfan | 33213-65-9[~~33213659~~] | 62 | 89 | 0.22 | 0.056 |
| bis(chloromethyl)ether | 542-88-1[~~542881~~] | 0.00010 | 0.00029 | - | - |
| bis(2-chloroethyl)ether | 111-44-4[~~111444~~] | 0.030 | 0.53 | - | - |
| bis(2-chloroisopropyl)ether | 108-60-1[~~108601~~] | 1,400 | 65,000 | - | - |
| bis(2-ethylhexyl)phthalate | 117-81-7[~~117817~~] | 1.2 | 2.2 | - | - |
| Bromoform | 75-25-2[~~75252~~] | 4.3 | 140 | - | - |
| Butylbenzyl phthalate | 85-68-7[~~85687~~] | 1,500 | 1,900 | - | - |
| Cadmium | 7440-43-9[~~7440439~~] | 5 | - | $e^{(0.9789(\ln Hard^*)-3.866)}$[~~e(1.0166 (ln Hard*) 3.924)~~] | $e^{(0.7977(\ln Hard^*)-3.909)}$[~~e(0.7409 (ln Hard*) 4.719)~~] |
| Carbaryl | 63-25-2 | | | 2.1 | 2.1 |
| Carbon tetrachloride | 56-23-5[~~56235~~] | 0.23 | 1.6 | - | - |
| Chlordane | 57-74-9[~~57749~~] | 0.00080 | 0.00081 | 2.4 | 0.0043 |
| Chloride | 16887-00-6[~~16887006~~] | 250,000 | - | 1,200,000 | 600,000 |

| | | | | | |
|---|---|---|---|---|---|
| Chlorobenzene | 108-90-7[~~108907~~] | 130 | 1600 | - | - |
| Chlorodibromomethane | 124-48-1[~~124481~~] | 0.40 | 13 | - | - |
| Chloroform | 67-66-3[~~67663~~] | 5.7 | 470 | - | - |
| Chloropyrifos | 2921-88-2[~~2921882~~] | - | - | 0.083 | 0.041 |
| Chromium (total) | N/A | 100 | - | - | - |
| Chromium (III) | 16065-83-1[~~16065831~~] | - | - | $e^{(0.8190(\ln Hard^*)+3.7256)}$ [~~e(0.8190 (ln Hard*)+3.7256)~~] | $e^{(0.8190(\ln Hard^*)+0.6848)}$ [~~e(0.8190 (ln Hard*)+0.6848)~~] |
| Chromium (VI) | 18540-29-0[~~18540299~~] | - | - | 16 | 11 |
| Chrysene | 218-01-9[~~218019~~] | 0.0038 | 0.018 | - | - |
| Color | N/A | 75 Platinum Cobalt Units | - | - | - |
| Copper | 7440-50-8[~~7440508~~] | 1,300 | - | $e^{(0.9422(\ln Hard^*)-1.700)}$ [~~e(0.9422 (ln Hard*)-1.700)~~] | $e^{(0.8545(\ln Hard^*)-1.702)}$ [~~e(0.8545 (ln Hard*)-1.702)~~] |
| Cyanide, Free | 57-12-5[~~57125~~] | 140 | 140 | 22 | 5.2 |
| Demeton | 8065-48-3[~~8065483~~] | - | - | - | 0.1 |
| Diazinon | 333-41-5[~~333415~~] | | | 0.17 | 0.17 |
| Dibenzo(a,h)anthracene | 53-70-3[~~53703~~] | 0.0038 | 0.018 | - | - |
| Dichlorobromomethane | 75-27-4[~~75274~~] | 0.55 | 17 | - | - |
| Dieldrin | 60-57-1[~~60571~~] | 0.000052 | 0.000054 | 0.24 | 0.056 |
| Diethyl phthalate | 84-66-2[~~84662~~] | 17,000 | 44,000 | - | - |
| Dimethyl phthalate | 131-11-3[~~131113~~] | 270,000 | 1,100,000 | - | - |
| Di-n-butyl phthalate | 84-74-2[~~84742~~] | 2,000 | 4,500 | - | - |
| Dinitrophenols | 25550-58-7[~~25550587~~] | 69 | 5300 | - | - |
| Endosulfan sulfate | 1031-07-8[~~1031078~~] | 62 | 89 | - | - |
| Endrin | 72-20-8[~~72208~~] | 0.059 | 0.060 | 0.086 | 0.036 |
| Endrin aldehyde | 7421-93-4[~~7421934~~] | 0.29 | 0.30 | - | - |
| Ethylbenzene | 100-41-4[~~100414~~] | 530 | 2100 | - | - |
| Fluoranthene | 206-44-0[~~206440~~] | 130 | 140 | - | - |
| Fluorene | 86-73-7[~~86737~~] | 1,100 | 5,300 | - | - |
| Fluoride | **16984-48-8[~~N/A~~]** | 4,000 | - | - | - |
| Guthion | 86-50-0[~~86500~~] | - | - | - | 0.01 |
| Heptachlor | 76-44-8[~~76448~~] | 0.000079 | 0.000079 | 0.52 | 0.0038 |
| Heptachlor epoxide | 1024-57-3[~~1024573~~] | 0.000039 | 0.000039 | 0.52 | 0.0038 |
| Hexachlorobenzene | 118-74-1[~~118741~~] | 0.00028 | 0.00029 | - | - |
| Hexachlorobutadiene | 87-68-3[~~87683~~] | 0.44 | 18 | - | - |
| Hexachlorocyclo-hexane-Technical | 608-73-1[~~319868~~] | 0.0123 | 0.0414 | - | - |
| Hexachlorocyclopentadiene | 77-47-4[~~77474~~] | 40 | 1100 | - | - |
| Hexachloroethane | 67-72-1[~~67721~~] | 1.4 | 3.3 | - | - |
| Ideno(1,2,3-cd)pyrene | 193-39-5[~~193395~~] | 0.0038 | 0.018 | - | - |
| Iron[8] | 7439-89-6[~~7439896~~] | 300 | - | 4,000 | 1,000 |
| Isophorone | 78-59-1[~~78591~~] | 35.0 | 960 | - | - |
| Lead | 7439-92-1[~~7439921~~] | 15 | - | $e^{(1.273(\ln Hard^*)-1.460)}$ [~~e(1.273 (ln Hard*)-1.460)~~] | $e^{(1.273(\ln Hard^*)-4.705)}$ [~~e(1.273 (ln Hard*)-4.705)~~] |
| Lindane (gamma-BHC) | 58-89-9[~~58899~~] | 0.98 | 1.8 | 0.95 | |
| Malathion | 121-75-5[~~121755~~] | - | - | - | 0.1 |
| Mercury | 7439-97-6[~~7439976~~] | 2.0 | 0.051 | 1.4 | 0.77 |
| Methylmercury | 22967-92-6[~~22967926~~] | | 0.3 mg/Kg[9][~~mg/Kg~~] | | |
| Methoxychlor | 74-43-5[~~72435~~] | 100 | - | - | 0.03 |
| Methyl Bromide[~~Methylbromide~~] | 74-83-9[~~74839~~] | 47 | 1,500 | - | - |
| Methylene Chloride | 75-09-2[~~75092~~] | 4.6 | 590 | - | - |
| Mirex | 2385-85-5[~~2385855~~] | - | - | - | 0.001 |
| Nickel | 7440-02-0[~~7440020~~] | 610 | 4,600 | $e^{(0.8460(\ln Hard^*)+2.255)}$ [~~e(0.8460 (ln Hard*)+2.255)~~] | $e^{(0.8460(\ln Hard^*)+0.0584)}$ [~~e(0.8460 (ln Hard*)+0.0584)~~] |
| Nitrate (as N) | 14797-55-8[~~14797558~~] | 10,000 | - | - | - |
| Nitrobenzene | 98-95-3[~~98953~~] | 17 | 690 | - | - |
| Nitrosamines, Other | N/A | 0.0008 | 1.24 | - | - |
| N-Nitrosodibutylamine | 924-16-3[~~924163~~] | 0.0063 | 0.22 | - | - |
| N-Nitrosodiethylamine | 55-18-5[~~55185~~] | 0.0008 | 1.24 | - | - |
| N-Nitrosodimethylamine | 62-75-9[~~62759~~] | 0.00069 | 3.0 | - | - |
| N-Nitrosodi-n-Propylamine | 621-64-7[~~621647~~] | 0.0050 | 0.51 | - | - |
| N-Nitrosodiphenylamine | 86-30-6[~~86306~~] | 3.3 | 6.0 | - | - |
| N-Nitrosopyrrolidine | 930-55-2[~~930552~~] | 0.016 | 34 | - | - |
| Nonylphenol | 1044-05-1[~~1044051~~] | | | 28 | 6.6 |

| | | | | | |
|---|---|---|---|---|---|
| Parathion | 56-38-2[56382] | - | - | 0.065 | 0.013 |
| Pentachlorobenzene | 608-93-5[608935] | 1.4 | 1.5 | - | - |
| Pentachlorophenol | 87-65-5[87865] | 0.27 | 3.0 | $e^{(1.005(pH)-4.869)}$ [e(1.005(pH)-4.869)] | $e^{(1.005(pH)-5.134)}$ [e(1.005(pH)-5.134)] |
| Phenol[10] | 108-95-2[108952] | 21,000 | 860,000 | - | - |
| Polychlorinated Biphenyls (PCBs) | N/A | 0.000064 | 0.000064 | - | 0.014 |
| Pyrene | 129-00-0[129000] | 830 | 4,000 | - | - |
| Selenium | 7782-49-2[7782492] | 170 | 4,200 | | 5.0[11][5.0[9]] 8.6[12,13][8.6[10, 11]] 11.3[13,14][19.3 [11, 12]] |
| Silver | 7440-22-4[7440224] | - | - | $e^{(1.72(\ln Hard^*)-6.59)}$ [e(1.72 (ln Hard*)-6.59)] | - |
| Sulfate | **14808-79-8 [N/A]** | 250,000 | - | - | - |
| Hydrogen Sulfide, Undissociated | 7783-06-4[7783064] | - | - | - | 2.0 |
| Tetrachloroethylene | 127-18-4[127184] | 0.69 | 3.3 | - | - |
| Thallium | 7440-28-0[7440280] | 0.24 | 0.47 | - | - |
| Toluene | 108-88-3[108883] | 1300 | 15,000 | - | - |
| Total Dissolved Solids | N/A | 250,000 | - | - | - |
| Toxaphene | 8001-35-2[8001352] | 0.00028 | 0.00028 | 0.73 | 0.0002 |
| Tributyltin (TBT) | **688-73-3** | | | 0.46 | 0.072 |
| Trichloroethylene | 79-01-6[79016] | 2.5 | 30 | - | - |
| Vinyl Chloride | 75-01-4[75014] | 0.025 | 2.4 | - | - |
| Zinc | 7440-66-6[7440666] | 7,400 | 26,000 | $e^{(0.8473(\ln Hard^*)+0.884)}$ [e(0.8473 (ln Hard*)+0.884)] | $e^{(0.8473(\ln Hard^*)+0.884)}$ [e(0.8473 (ln Hard*)+0.884)] |
| 1,1-dichloroethylene | 75-35-4[75354] | 330 | 7100 | - | - |
| 1,1,1-trichloroethane | 71-55-6[71556] | 200 | - | - | - |
| 1,1,2-trichloroethane | 79-00-5[79005] | 0.59 | 16 | - | - |
| 1,1,2,2-tetrachloroethane | 79-34-5[79345] | 0.17 | 4.0 | - | - |
| 1,2-dichlorobenzene | 95-50-1[95501] | 420 | 1300 | - | - |
| 1,2-dichloroethane | 107-06-2[107062] | 0.38 | 37 | - | - |
| 1,2-dichloropropane | 78-87-5[78875] | 0.50 | 15 | - | - |
| 1,2-diphenylhydrazine | 122-66-7[122667] | 0.036 | 0.20 | - | - |
| 1,2-trans-dichloroethylene | 156-60-5[156605] | 140 | 10,000 | - | - |
| 1,2,4-trichlorobenzene | 120-82-1[120821] | 35 | 70 | - | - |
| 1,2,4,5-tetrachlorobenzene | 95-94-3[95943] | 0.97 | 1.1 | - | - |
| 1,3-dichlorobenzene | 541-73-1[541731] | 320 | 960 | - | - |
| 1,3-dichloropropene | 542-75-6[542756] | 0.34 | 21 | - | - |
| 1,4-dichlorobenzene | 106-46-7[106467] | 63 | 190 | - | - |
| 2-chloronaphthalene | 91-58-7[91587] | 1,000 | 1,600 | - | - |
| 2-chlorophenol | 95-57-8[95578] | 81 | 150 | - | - |
| 2-methyl-4,6-dinitrophenol | 534-52-1[534521] | 13 | 280 | - | - |
| 2,3,7,8-TCDD (Dioxin) | 1746-01-6[1746016] | 5.0 E - 9 | 5.1 E - 9 | - | - |
| 2,4-D | 94-75-7[94757] | 100 | - | - | - |
| 2,4-dichlorophenol | 120-83-2[120832] | 77 | 290 | - | - |
| 2,4-dimethylphenol | 105-67-9[105679] | 380 | 850 | - | - |
| 2,4-dinitrophenol | 51-28-5[51285] | 69 | 5,300 | - | - |
| 2,4-dinitrotoluene | 121-14-2[121142] | 0.11 | 3.4 | - | - |
| 2,4,5-TP (Silvex) | 93-72-1[93721] | 10 | - | - | - |
| 2,4,5-trichlorophenol | 95-95-4[95954] | 1,800 | 3,600 | - | - |
| 2,4,6-trichlorophenol | 88-06-2[88062] | 1.4 | 2.4 | - | - |
| 3,3'-dichlorobenzidine | 91-94-1[91941] | 0.021 | 0.028 | - | - |
| 4,4'-DDD | 72-54-8[72548] | 0.00031 | 0.00031 | - | - |
| 4,4'-DDE | 72-55-9[72559] | 0.00022 | 0.00022 | - | - |
| 4,4'-DDT | 50-29-3[50293] | 0.00022 | 0.00022 | 1.1 | 0.001 |

[1]CAS = Chemical Abstracts Service.
[2]Water quality criteria in μg/L unless reported in different units.
[3]Metal concentrations shall be total recoverable metals to be measured in an unfiltered sample, unless it can be demonstrated that a more appropriate analytical technique is available that provides a measurement of that portion of the metal present which causes toxicity to aquatic life. An applicant for a Clean Water Act Section 402 permit may request site-specific copper aquatic life criteria using the Copper Biotic Ligand Model established in Aquatic Life Ambient Freshwater Quality Criteria-Copper, EPA, February 2007.
[4]DWS = Domestic Water Supply Source.
[5]Fish = protecting human health regarding fish consumption.
[6]Acute criteria = protective of aquatic life based on one (1) hour exposure that does not exceed the criterion for a given pollutant.
[7]Chronic = protective of aquatic life based on ninety-six (96) hour exposure that does not exceed the criterion of a given pollutant more than once every three (3) years on the average.
[8]The chronic criterion for iron shall not exceed three and five tenths (3.5) mg/L (thirty-five hundred μg/L) if aquatic life has not been shown to be adversely affected.
[9] This value is the concentration in fish or shellfish tissue (wet weight).
[10] Section 2 of this administrative regulation also contains a criterion for phenol.
[11] If fish tissue data are available, fish tissue data shall take precedence over water column data.
[12][~~10~~]This value is the concentration in micrograms/g (dry weight) of whole fish tissue.
[13][~~11~~] A concentration of five and zero tenths (5.0) μg/L or greater selenium in the water column shall trigger further sampling and analysis of whole-body fish tissue or alternately of fish fillet[~~egg/ovary tissue~~.
~~[12]This value is the concentration in mg/g (dry weight) of fish egg/ovary tissue~~].
[14] This value is the concentration in μg/g (dry weight) of skinless, boneless fish fillet**,** which may be analyzed instead of whole body tissue **if**[~~when~~] predator or bottom-feeding fish exceed twelve (12) inches in length.
*Hard = Hardness as mg/L $CaCO_3$.

(2) The following additional criteria for radionuclides shall apply for Domestic Water Supply use:

(a) The gross total alpha particle activity, including radium-226 but excluding radon and uranium, shall not exceed fifteen (15) pCi/L;

(b) Combined radium-226 and radium-228 shall not exceed five (5) pCi/L. Specific determinations of radium-226 and radium-228 are not necessary if dissolved gross alpha particle activity does not exceed five (5) pCi/L;

(c) The concentration of total gross beta particle activity shall not exceed fifty (50) pCi/L;

(d) The concentration of tritium shall not exceed 20,000 pCi/l;

(e) The concentration of total Strontium-90 shall not exceed eight (8) pCi/L; and

(f) The concentration of uranium shall not exceed thirty (30) ***μg/l***[~~***mg/l***~~].

Section 7. Recreational Waters. (1) Primary contact recreation water. The following criteria shall apply to waters designated as primary contact recreation use during the primary contact recreation season of May 1 through October 31:

(a)[~~Fecal coliform content or~~] Escherichia coli content shall not exceed[~~200 colonies per 100 ml or~~] 130 colonies per 100 ml[~~respectively~~] as a geometric mean based on not less than five (5) samples taken during a thirty (30) day period. Content also shall not exceed 240[~~400~~] colonies per 100 ml in twenty (20) percent or more of all samples taken during a thirty (30) day period for[~~fecal coliform or 240 colonies per 100 ml~~] for Escherichia coli. Fecal coliform criteria listed in subsection (2)(a) of this section shall apply during the remainder of the year;

(b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours; and

(c)1. PCR criteria may be suspended in CSO receiving waters during CSO events for a duration determined by the cabinet-approved Long-Term Control Plan as established in 401 KAR 5:005 and the facility KPDES permit; if:

a. **An exception to criteria is approved[~~A variance is approved~~]**:

(i) In accordance with **Section 10 or[~~Section 10 or Section~~]** 11 of this administrative regulation; and

(ii) Consistent with 40 C.F.R. 131.14; or

b. A redesignation pursuant to a use attainability analysis has been approved:

(i) In accordance with 401 KAR 10:026, Sections 2 through 4; and

(ii) Consistent with 40 C.F.R. 131.10(g).[~~(c) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours; and~~]

2. A table of CSO-impacted waters for which a suspension of the Primary Contact Recreation has been approved shall be located in 401 KAR 10:026.[~~(c) Fecal coliform content criteria listed in paragraph (a) of this subsection shall no longer apply beginning November 1, 2019.~~]

(2) Secondary contact recreation water. The following criteria shall apply to waters designated for secondary contact recreation use during the entire year:

(a) Fecal coliform content shall not exceed 1,000 colonies per 100 ml as a thirty (30) day geometric mean based on not less than five (5) samples; nor exceed 2,000 colonies per 100 ml in twenty (20) percent or more of all samples taken during a thirty (30) day period;[~~and~~]

(b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours;[~~.~~]

(c)1. SCR criteria may be suspended in CSO receiving waters during CSO events for a duration determined by the cabinet-approved Long-Term Control Plan as established in 401 KAR 5:005 and the facility KPDES permit; if:

a. **An exception to criteria is approved[~~A variance is approved~~]**:

(i) In accordance with **Section 10 or[~~Section 10 or Section~~]** 11 of this administrative regulation; and

(ii) Consistent with 40 C.F.R. 131.14; or

b. A redesignation pursuant to a use attainability analysis has been approved:

(i) In accordance with 401 KAR 10:026, Sections 2 through 4; and

(ii) Consistent with 40 C.F.R. 131.10(g).

2. A table of CSO-impacted waters for which a suspension of the Secondary Contact Recreation criteria has been approved shall be located in 401 KAR 10:026.

Section 8. Outstanding State Resource Waters. This designation category includes certain unique waters of the commonwealth. (1) Water for inclusion.

(a) Automatic inclusion. The following surface waters shall automatically be included in this category:

1. Waters designated pursuant to the Kentucky Wild Rivers Act, KRS 146.200 through 146.360[~~146.200-146.360~~];

2. Waters designated pursuant to the Federal Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287; and

3. Waters that support federally recognized endangered or threatened species pursuant to the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531-1544.

(b) Permissible consideration. Other surface waters shall be considered for inclusion in this category if:

1. The surface waters flow through or are bounded by state or federal forest land, or are of exceptional aesthetic or ecological value or are within the boundaries of national, state, or local government parks, or are a part of a unique geological, natural, or historical area recognized by state or federal designation; or

2. The surface water is a component part of an undisturbed or relatively undisturbed watershed that can provide basic scientific data and possess outstanding water quality characteristics, or fulfill two (2) of the following conditions[~~criteria~~]:

a. Support a diverse or unique native aquatic flora or fauna;

b. Possess physical or chemical characteristics that provide an unusual and uncommon aquatic habitat; or

c. Provide a unique aquatic environment within a physiographic region.

(2) Outstanding state resource waters protection.[~~The designation of certain waters as outstanding state resource waters shall fairly and fully reflect those aspects of the waters for which the designation is proposed.~~] The[~~cabinet shall determine~~] water quality criteria for protection of an OSRW shall be[~~these waters~~] as established in paragraphs (a) through (d) of this section.

(a) At a minimum, the criteria of Section 2 and Table 1 of Section 6 of this administrative regulation and the appropriate criteria associated with the stream use designation assignments in 401 KAR 10:026, shall be applicable to these waters.

(b) Outstanding state resource waters that are listed as Exceptional Waters in 401 KAR 10:030, Section 1(2) shall have dissolved oxygen maintained at a minimum concentration of six and zero-tenths (6.0) mg/L as a twenty-four (24) hour average and an instantaneous minimum concentration of not less than five and zero-tenths (5.0) mg/L.

(c) **1.**[~~1. If the values identified for an outstanding state resource water are dependent upon or related to instream water quality, the cabinet shall review existing water quality criteria and determine if additional criteria or more stringent criteria are necessary for protection, and evaluate the need for the development of additional data upon which to base the determination.~~

~~2.~~] Existing water quality and habitat shall be maintained and protected in those waters designated as outstanding state resource waters that support federally threatened and endangered species of aquatic organisms, unless the cabinet determines[~~it can be demonstrated~~] that lowering[~~of~~] water quality or a habitat modification will not have an adverse[~~a harmful~~] effect on the threatened or endangered species that the water supports.

**2. If the basis of the Outstanding State Resource Water designation depends on or relates to instream water quality, the cabinet shall:**

**a. Review existing water quality criteria to determine if additional criteria or more stringent criteria are necessary to protect the water; and**

**b. Evaluate the need to develop additional data upon which to base the determination.**

**3. If the cabinet determines that more stringent instream water quality criteria are necessary to protect the basis of the Outstanding State Resource Water designation as established in paragraph 2 of this subsection, those additional protective criteria shall not be effective until the cabinet lists those criteria with the respective waterbody in 401 KAR 10:026.[~~(d) 1. The cabinet shall evaluate the need for and shall establish more stringent instream water quality criteria if necessary to protect the basis for the Outstanding State Resource Water designation.~~**

**~~2. Adoption of additional protective criteria as established in subsection (2)(d) shall be listed with the respective stream segment in 401 KAR 10:026~~]**[~~Adoption of more protective criteria in accordance with this section shall be listed with the respective stream segment in 401 KAR 10:026~~].

(3) Determination of designation.

(a) A person may present a proposal to designate certain waters pursuant to this section. Documentation requirements in support of an outstanding state resource water proposal shall contain those elements outlined in 401 KAR 10:026, Section 3(3)(a) through (h).

(b)1. The cabinet shall review the proposal and supporting documentation to determine if the proposed waters qualify as outstanding state resource waters within the conditions[~~criteria~~] established by this administrative regulation.

2. The cabinet shall document the determination to deny or to propose redesignation, and a copy of the decision shall be served upon the petitioner and other interested parties.

(c) After considering all of the pertinent data, a redesignation, if appropriate, shall be made pursuant to 401 KAR 10:026.

Section 9. Water Quality Criteria for the Main Stem of the Ohio River. (1) The water quality standards established in this Chapter provide for the protection of the designated uses of the Ohio River **with consideration of the uses and water quality criteria established in the Pollution Control Standards[~~and the achievement of the goals~~]** of the Ohio River Valley Water Sanitation Compact. The[~~following~~] criteria established in this Section shall apply to the main stem of the Ohio River from its juncture with the Big Sandy River at River Mile 317.1 to its confluence with the Mississippi River, and shall not be exceeded.

(2) These waters shall be subject to all applicable provisions of 401 KAR 10:001, 10:026, 10:029, 10:030, and this administrative regulation, except in-stream[~~for those criteria in paragraphs (a) and (b) of this subsection.~~

~~(a) Dissolved oxygen. Instream~~] concentrations of dissolved oxygen shall:

(a) Average at least five and zero-tenths (5.0) mg/L per calendar day; and

(b) Shall not be less than four and zero-tenths (4.0) mg/L except during the April 15 - June 15 spawning season when a minimum of five and one-tenth (5.1) mg/L shall be maintained.

[~~(b) Maximum allowable instream concentrations for nitrite-nitrogen for the protection of human health shall be one and zero-tenths (1.0) mg/L and shall be met at the edge of the assigned mixing zone.~~]

Section 10. Exceptions to Criteria for Specific Surface Waters. (1) The cabinet may grant exceptions to the criteria contained in Sections 2, 4, 6, 7, 8, and 9 of this administrative regulation for specific surface water upon demonstration by an applicant that maintenance of applicable water quality criteria is not attainable or scientifically valid but the use designation is still appropriate.

(2) The analysis shall show that the water quality criteria cannot be reasonably achieved, either on a seasonal or year-round basis due to natural conditions or site-specific factors differing from the conditions used to derive criteria in Sections 2, 4, 6, 7, 8, and 9 of this administrative regulation.

(a) Site-specific criteria shall be developed by the applicant utilizing toxicity tests, indicator organisms, and application factors that shall be consistent with those outlined in Chapter 3 of Water Quality Standards Handbook, EPA, 2017[~~1994~~].

(b) In addition, an applicant shall supply the documentation established[~~listed~~] in 401 KAR 10:026, Section 3 and 40 C.F.R. 131.14(b).

(c) The documentation required by subparagraph (b) shall be subject to the public notice and comment requirements established in 40 C.F.R. 130.20(b) and 131.14.

(3) An exception to criteria listed in Table 1 of Section 6 of this administrative regulation for the protection of human health from the consumption of fish tissue may be granted if it is demonstrated that natural, ephemeral, intermittent, or low flow conditions or water levels preclude the year-round support of a fishery, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges.

(4) Before granting an exception to water quality criteria, the cabinet shall ensure the maintenance of downstream water quality and that the variance **shall[~~does~~]** not preclude the attainment of designated uses[~~that the water quality standards~~] of downstream surface waters[~~shall be attained and maintained~~].

(5)(a) All exceptions to water quality criteria shall be subject to reevaluation[~~review~~] at least every five (5)[~~three (3)~~] years.

(b) If reevaluation results are not submitted, the exception to criteria shall no longer be the applicable water quality standard for

the purposes of this administrative regulation and the federal Clean Water Act.

(6) Exceptions to water quality criteria shall be adopted as an administrative regulation by listing them with the respective surface water in 401 KAR 10:026.

Section 11. Exceptions to Criteria for Individual Dischargers. (1) An exception to criteria may be granted to an individual discharger based on a demonstration by the discharger, that KPDES permit compliance with existing instream criteria cannot be attained because of factors specified in 401 KAR 10:026, Section 2(4)(a) through (f) and 40 C.F.R. 131.14(b)(1)(A)(1) through (3).

(2) The demonstration shall include:

(a) An assessment of alternative pollution control strategies and biological assessments that indicated designated uses are being met; and

(b) The documentation established in 40 C.F.R. 131.14(b).

(3) Before granting an exception to water quality criteria, the cabinet shall ensure the maintenance of downstream water quality and that the variance **shall[~~does~~]** not preclude the attainment of designated uses[~~water quality standards~~] of downstream surface waters[~~shall be attained and maintained~~].

(4)(a) All exceptions shall be submitted to the cabinet for reevaluation[~~review~~] at least every five (5)[~~three (3)~~] years.

(b) Upon review, the discharger shall demonstrate to the cabinet the effort the discharger made to reduce the pollutants in the discharge to levels that would achieve existing applicable water quality criteria.

(c) If reevaluation results are not submitted, the exception to criteria shall no longer be the applicable water quality standard for the purposes of this administrative regulation and the federal Clean Water Act.

(5) The highest level of effluent quality that can be economically and technologically achieved shall be ensured while the exception is in effect.

(6) Exceptions to criteria for individual discharges shall be subject to the public participation requirements as established in 40 C.F.R. 131.20(b)[~~The Kentucky Pollution Discharge Elimination System permitting program shall be the mechanism for the review and public notification of intentions to grant exceptions to criteria~~].

Section 12. Compliance Schedules. (1) The cabinet may allow a compliance schedule to give a permittee time to comply with water quality based effluent limitations that derive from and comply with water quality standards.

(2) Compliance schedules shall be as established in 40 C.F.R. 122.47.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Water Quality Standards Handbook-Chapter 3", EPA 2017, Publication No. EPA-823-B-17-001[~~August 1994, Publication EPA-823-B-94-005a~~], U.S. Environmental Protection Agency, Office of Water, Washington, D.C.;[~~and~~]

(b) "Interim Economic Guidance for Water Quality Standards Workbook", [~~EPA~~]March 1995, Publication EPA-823-B-95-002, U.S. Environmental Protection Agency, Office of Water, Washington, D.C.; and

(c) "Aquatic Life Ambient Freshwater Quality Criteria-Copper", EPA, February 2007, Publication No. EPA 822-R-07-001, U.S. Environmental Protection Agency, Office of Water, Washington D.C.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3)(a) "Water Quality Standards Handbook-Chapter 3", EPA 2017, Publication EPA-823-B-17-001, U.S. Environmental Protection Agency, Office of Water can also be found at https://www.epa.gov/sites/production/files/2014-10/documents/handbook-chapter3.pdf.

(b) "Interim Economic Guidance for Water Quality Standards Workbook", March 1995, Publication EPA-823-B-95-002, U.S. Environmental Protection Agency, Office of Water can also be found at https://www.epa.gov/sites/production/files/2016-03/documents/econworkbook-complete.pdf.

(c) "Aquatic Life Ambient Freshwater Quality Criteria-Copper", February 2007, Publication No. EPA-822-R-07-001, U.S. Environmental Protection Agency, Office of Water can also be found at https://www.epa.gov/sites/production/files/2019-02/documents/al-freshwater-copper-2007-revision.pdf.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 10 a.m.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

**PUBLIC PROTECTION CABINET**
**Department of Insurance**
**(As Amended at ARRS, November 12, 2019)**

**806 KAR 9:020. False or deceptive names, titles, prohibited.**

RELATES TO: KRS[~~292.330(1),~~] 304.1-010,***[304.09,]*** 304.12-130

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes that the Commissioner of Insurance to make administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code[~~as defined in KRS 304.1-010~~]. This administrative regulation prohibits the use of names, titles, degrees, certificates, accomplishments, or the like, that implies a greater skill or knowledge than the person actually possesses.

Section 1. Prohibited Conduct.[~~Definitions. (1) "Agent" is defined in KRS 304.9-020(1).~~

~~(2) "Annuity" is defined in KRS 304.5-030.~~

~~(3) "Commissioner" is defined by KRS 304.1-050(1).~~

~~(4) "Consultant" is defined in KRS 304.9-040.~~

~~(5) "Insurer" is defined in KRS 304.1-040.~~

~~(6) "Licensee" means agent, insurer, if an agent is not involved, and consultant.~~

~~(7) "Life Insurance" is defined in KRS 304.5-020.~~

~~Section 2.~~] A person licensed pursuant to the Kentucky Insurance Code[~~KRS Chapter 304, Subtitle 9~~], shall not, in the conduct of business, use, or knowingly permit to be used on the person's behalf, any name, title, letters, degrees, certificate, accomplishment, award, designation or the like, which [~~:~~

~~(1)~~] implies or purports to convey that:

(1) The person possesses a greater skill, knowledge, experience**,** or qualification than is actually a fact; or

(2)[~~Exceeds the maximum requirements for licensing under the Kentucky Insurance Code as defined in KRS 304.1-010; or~~

~~(3) Implies or purports to convey that~~] The person possesses a greater skill, knowledge, experience, or qualification in advising or servicing seniors in connection with the solicitation, sale, or purchase of a life insurance or annuity product than is actually a fact. The manner in which specified words are used shall be a factor in determining whether a name or title is in violation, and ***the commissioner*** shall consider the combinations of:

(a) "Senior", "retirement", "elder", or similar words; ***and***

(b) With "certified", "registered", "chartered", "advisor", "specialist", "consultant", "planner", or similar words.

Section 2. Properly Conferred Titles Permitted. This administrative regulation shall not prohibit the use of names, titles, letters, degrees, certificates, recognition of accomplishments, awards, designations, or the like which have been properly conferred upon a licensee by:

(1) A duly accredited and recognized college or university; or

(2) A duly accredited and recognized professional association

or society.

Section 3. Certain Job Titles Prohibited.[~~Section 2 of~~] This administrative regulation shall not prohibit the use of[~~names, titles, letters, degrees, certificates, recognition of accomplishments, awards, designations, or the like which have been properly conferred upon a licensee by:~~

~~(1) A duly accredited and recognized college or university; or~~

~~(2) A duly accredited and recognized professional association or society.~~

~~Section 4. Factors Constituting a Certification or Designation. In determining if a combination of words, or an acronym standing for a combination of words, constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing seniors, factors to be considered shall include:~~

~~(1)(a) Use of the words "senior", "retirement", "elder", or similar words;~~

~~(b) Combined with "certified", "registered", "chartered", "advisor", "specialist", "consultant", "planner", or similar words; and~~

~~(2) The manner in which those words are combined.~~

~~Section 5. Certain Job Titles.~~] a job title within an organization[~~that is~~] licensed or registered by a state or federal financial services regulatory agency, including an agency that regulates insurance licensees,[~~shall not be a certification or professional designation,~~] unless:

(1) It is used in a manner that would confuse or mislead a reasonable consumer; and

(2) The job title:

(a) Indicates seniority or standing within the organization; or

(b) Specifies an individual's area of specialization within the organization. [~~Section 6. This administrative regulation shall not exempt an individual from compliance with the registration requirements of KRS 292.330(1) if the individual transacts business in this state as a broker-dealer, investment adviser, agent, or investment adviser representative.~~]

NANCY G. ATKINS, Commissioner
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: April 15, 2019

FILED WITH LRC: April 15, 2019 at 11 a.m.

CONTACT PERSON: Patrick O'Connor II, Deputy Commissioner, 215 W. Main St., Frankfort, Kentucky 40602, phone 502-564-6026, fax 502-564-1453, email patrick.oconnor@ky.gov.

**PUBLIC PROTECTION CABINET**
**Department of Insurance**
**(As Amended at ARRS, November 12, 2019)**

**806 KAR 9:025. Agent licensing process.**

RELATES TO: KRS 304.4-010, 304.9-105, 304.9-130, 304.9-150, 304.9-160, 304.9-230, 304.9-270, 304.9-295, ***304.9-320,*** 304.9-430

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-080, 304.9-105, ***304.9-160, 304.9-170,*** 304.9-230, 304.9-270, 304.9-295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. KRS 304.9-080 requires the commissioner to prescribe and furnish all forms required for licenses and appointments under Subtitle 9 of the insurance code. KRS 304.9-105 requires the commissioner to promulgate administrative regulations to mandate a prelicensing course of study for all agents except for a variable life and variable annuities line of authority and limited lines of authority. KRS 304.9-230 requires the commissioner to promulgate administrative regulations regarding a prelicensing course of study for limited lines of authority. KRS 304.9-160 requires the commissioner to establish the examination process, and KRS 304.9-170 provides exemptions to the examination requirement. KRS 304.9-270 requires the commissioner to prescribe a form required for appointment of individual and business entity agents. KRS 304.9-295 requires the commissioner to establish forms and standards for the approval of pre-licensing and continuing education course providers, instructors, and courses. This administrative regulation establishes the guidelines for individual agents, business entities, consultants, and adjusters to become licensed, obtain appointments, as required, in Kentucky, maintain their licenses through the completion of continuing education, and surrender their license voluntarily or have their appointment terminated by an insurer.

Section 1. Pre-Licensing Course Requirements.

(1) An individual applying for an agent license shall complete a pre-licensing course study approved by the commissioner for a minimum of forty (40) hours for life and health insurance, forty (40) hours for property and casualty insurance, or twenty (20) hours for each line of authority, as applicable, for the lines of authority included in the application, unless the applicant is:

(a) Seeking a limited line of authority under KRS 304.9-230; ***or***

(b) Exempt pursuant to KRS 304.9-170***[~~; or~~***

***~~(c) A rental vehicle managing employee licensee~~]***.

(2)(a) All prelicensing courses, providers, and instructors shall be approved by the commissioner prior to offering a course.

(b) A prelicensing course provider shall submit either in writing or electronically through the department's Web site, http://insurance.ky.gov:

1. A Form KYP-01, Provider Approval Application, submitted once to become an approved course provider;

2. A Form CE/PL-100, Course Approval Application, for each course the approved provider wants to offer;

3. A Form CE/PL-200, Instructor Approval Application, for each course instructor;

4. The fee, as applicable, established for provider, instructor, and course approval in 806 KAR 4:010; and

5. An outline of the content of the course of study.

(c) In approving a prelicensing course of study, the commissioner or the commissioner's designee shall consider whether the course of study covers the subject matter included in the department's current study outlines or their equivalent.

(d) If approved, a prelicensing course of study approved by the commissioner shall be renewed biennially.

(e) If approved previously, the provider and instructor approval applications are not required to be submitted with each course.

(3) A prelicensing course of study is valid for one (1) year from the date of completion.

(4) The prelicensing provider shall submit proof of completion of a course of study to the department and applicant on Form CPL-01***, Certificate of Pre-Licensing Course Completion*** or electronically through the department's Web site, http://insurance.ky.gov, for each applicant.

Section 2. Agent Examinations.

(1) All applicants for a license shall file with the commissioner:

(a) A completed Form 8301, NAIC Individual Insurance Producer License Application;

(b) Documentation demonstrating successful completion of any required prelicensing courses;

(c) A completed background check through the administrative office of the courts; and

(d) Payment of the fees applicable to the license and lines of authority sought according to KRS 304.4-010 and 806 KAR 4:010.

(2) If an examination is required, the documents and fees required in subsection (1) of this section shall be submitted prior to scheduling an examination.

(3) An individual applying for a line of authority identified in KRS 304.9-030(2) shall successfully complete examinations as follows:

(a) For life line of authority, a life examination;

(b) For health line of authority, a health examination;

(c) For property line of authority, a property examination;

(d) For casualty line of authority, a casualty examination;

(e) For personal lines, a property and casualty personal lines examination;

(f) For a line of authority identified in accordance with KRS 304.9-030(2)(h), an examination appropriate for the kind of insurance; and

(g) For variable life and variable annuity products, no examination is required.

(4) Examinations shall only be required for the following limited lines of authority identified in KRS 304.9-230:

(a) For crop limited of authority, a crop examination; and

(b) For rental vehicle limited line of authority, a rental vehicle examination shall be administered or monitored by a rental vehicle agent pursuant to 806 KAR 9:265.

(5) Every applicant for a license required to take an examination shall answer correctly seventy (70) percent of the questions to pass the examination.

(6) To retake an examination, an applicant shall submit:

(a) Form 8304, Examination Retake Form; and

(b) The applicable examination retake fees established in 806 KAR 4:010.

Section 3. Adjuster Examinations.

(1) An individual applying for an adjuster line of authority identified in KRS 304.9-430(7) or (8) shall:

(a) For property and casualty line of authority, successfully complete a property and casualty adjuster examination;

(b) For workers' compensation line of authority, successfully complete a workers' compensation adjuster examination; and

(c) For crop line of authority, either:

1. Successfully complete a crop adjuster examination; or

2. Demonstrate certification through the Crop Adjuster Proficiency Program, by providing to the department a copy of a Crop Adjuster Proficiency Program certification identification card with an active status issued by the federal Risk Management Agency, an agency within the U.S. Department of Agriculture, which specifies the applicant has passed a proficiency examination to adjust multi-peril crop claims.

(2) Every applicant for a license required to take an examination shall answer correctly seventy (70) percent of the questions to pass the examination.

Section 4. Consultant Examination. An applicant for a consultant license shall answer correctly seventy (70) percent of the questions to pass the consultant examination and obtain a license.

Section 5. Continuing Education.

(1) Continuing education providers, instructors, and courses shall be approved by the commissioner unless specifically exempted by KRS 304.9-295.

(a) Continuing education courses providers shall submit a completed Form KYP-01, Provider Approval Application.

(b) Continuing education course instructors shall submit a completed Form CE/PL-200, Instructor Approval Application.

(c) A continuing education course shall be filed by submitting the Form CE/PL-100, Course Approval Application form at least sixty (60) days in advance of advertising, unless good cause is demonstrated by the provider for the failure to file. If the course is offered in multiple states, the provider may use the National Association of Insurance Commissioners'**,** ***NAIC[“]***Uniform Continuing Education Reciprocity Course Filing Form***[“]*** for approval.

(d) The commissioner shall consider the following in determining approval of continuing education courses:

1. Whether the applicant has remitted all fees due once the total credit hours are determined pursuant to 806 KAR 4:010;

2. Whether the continuing education course contributes directly, at a professional level, to the competence of the licensee with respect to the following subjects:

a. Insurance, annuities, and risk management;

b. Insurance laws and administrative regulations;

c. Mathematics, statistics, and probability;

d. Economics;

e. Business law;

f. Finance;

g. Taxes;

h. Agency management including all aspects of agency operations that support the long-term stability of the agency system and encourage the service and protection of customers;

i. Ethics; or

j. Other topics approved by the commissioner which contribute directly at a professional level to the competence of the licensee.

(e) The continuing education course shall:

1. Include current, relevant, accurate, and valid reference materials, graphics, and interactivity;

2. Have clearly defined objectives and course completion criteria;

3. Have a written outline and study materials or texts; and

4. Include a means for evaluation.

(f) Self-study courses shall require successful completion of an examination.

(g) Continuing education credit shall not be provided for:

1. Any course used to prepare for taking an examination required pursuant to KRS Chapter 304;

2. Committee service for professional organizations;

3. Computer training to develop functional skills; and

4. Motivational or self-help courses.

(h) The commissioner shall measure continuing education course credit hours by the following:

1. Each credit hour for live instruction courses, completed in a classroom, by video, teleconference, or computer, shall include at least fifty (50) minutes of continuous instruction or participation.

2. Each credit hour for recorded self-study courses, completed online or by correspondence, shall be calculated in accordance with the National Association of Insurance Commissioners'**,** ***[“]***Recommended Guidelines for Online Courses.***[“]***

(i) Any material change in a previously approved continuing education course shall be filed and approved by the commissioner prior to use.

(j) Biennially, providers shall renew approval of continuing education courses and instructors by submitting all applicable information and fee payment to the commissioner prior to June 30 of even-numbered years.

(2) Licensees engaging in the sale, solicitation, or negotiation of specialized products as noted are subject to the following:

(a) Resident licensees selling, soliciting, or negotiating insurance products that qualify under the Long-Term Care Partnership Insurance Program, as described in KRS 304.14-642, shall complete eight (8) hours of initial long-term care training, and four (4) hours of additional training for each biennial continuing education compliance period;

(b) Any resident licensee licensed with Property and Casualty lines of authority selling federal flood insurance shall complete three (3) hours of training in accordance with the Flood Insurance Reform Act of 2004, as set forth in Pub.L. 108-264, Section 207; and

(c) Any individual licensee who holds a life line of authority shall successfully complete four (4) hours of initial training, prior to the sale, solicitation, or negotiation of annuities, unless the licensee has documented the completion of substantially similar training in another state, that shall include information on the following topics:

1. The types of annuities and various classifications of annuities;

2. Identification of the parties to an annuity;

3. The manner in which fixed, variable, and indexed annuity contract provisions affect consumers;

4. The application of income taxation of qualified and non-qualified annuities;

5. The primary uses of annuities; and

6. Appropriate sales practices, replacement, and disclosure requirements.

(3) Continuing education providers shall:

(a) Within thirty (30) days of completion of a continuing education course, submit to the commissioner the Continuing Education Certificate of Completion forms and attendance roster for all licensees who satisfactorily completed the course;

(b) Issue the Form CE-301, ***Approved*** Continuing Education Certificate of Completion form to the licensee that successfully completed the course; and

(c) Maintain all attendance rosters and course completion certificates in hard copy or electronic format for at least five (5) years for review, as necessary, by the commissioner.

(4) Licensees remain responsible for the timely submission of continuing education certificates of completion to the commissioner even if the provider does not fulfill their responsibilities under this section.

(5) Licensees may carry forward up to twelve (12) excess credit hours to the subsequent continuing education biennium.

(6) If the department does not receive proof of fulfillment of a licensee's continuing education requirement on or before the deadline, the commissioner shall:

(a) Make information of the deficiency available to the licensee; and

(b) Terminate the license if proof of completion of the deficient hours is not received as prescribed by KRS 304.9-295.

(7) Licensees whose license is terminated due to the failure to submit the certification of continuing education by the required deadline shall:

(a) Have the license reissued within twelve (12) months of the license termination if the licensee:

1. Satisfies the delinquent continuing education requirements;

2. Submits a new application with required attachments included within Section 2(1) ***of this administrative regulation*** for a license; and

3. Submits the applicable fees ***established in 806 KAR 4:010***; or

(b) Be required to complete all licensing requirements specified in KRS Chapter 304, Subtitle 9 and this administrative regulation after the continuing education delinquency remains unsatisfied for twelve (12) months or longer.

(8) A licensee may seek exemption from Continuing Education requirements by completing ***a Form CE AFF 304,[an "]***Affidavit for Exemption from Continuing Education Requirement***[", form CE AFF 304].***

(a) An agent exempted from continuing education requirements on the basis of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions may withdraw the continuing education exemption and may have all restrictions against selling, soliciting, and negotiating insurance removed from the agent license by:

1. Completing the continuing education requirements for the immediate preceding continuing education biennium;

2. Providing a certification of completion of those continuing education requirements; and

3. Providing a signed, written statement withdrawing the affidavit.

(b) The false use of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions for any reason, including for the purpose of obtaining an extension for completion of continuing education requirements for a continuing education biennium, shall be a violation of KRS 304.9-295 and shall subject the affiant to suspension or revocation of the agent license.

(9) Members of the Armed Forces who have been mobilized or deployed in support of their duties may:

(a) Request an extension of time for completion of continuing education requirements, in accordance with KRS 304.9-260(3), by filing with the department the ***Form MLW-01,*** Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment, ***[Form MLW-1]***; or

(b) Request a waiver of continuing education requirements in accordance with KRS 304.9-260(3).

Section 6. Business Entity Agent Application and Designation.

(1) A business entity seeking an agent license pursuant to KRS 304.9-130 shall submit:

(a) Form 8301-BE, Uniform Application for Business Entity Insurance License; and

(b) The applicable fee ***established in 806 KAR 4:010***.

(2) A business entity shall submit Form 8305, Business Entity Designation or Termination of Designation Form to designate individuals authorized to act under the entity's license and appointments.

Section 7. Agent Appointment.

(1) Each insurer shall appoint each agent acting on the insurer's behalf within fifteen (15) days of the agent contract's execution or the date on which the agent submits their first application to the insurer, whichever is earlier, as established by KRS 304.9-270.

(2) An insurer seeking approval of an agent's appointment shall submit:

(a) Form 8302-AP, Producer Appointment; and

(b) the applicable filing fee ***established in 806 KAR 4:010***.

(3) An insurer terminating an appointment ***pursuant to KRS 304.9-280*** shall submit Form 8302-TE, Termination of Producer Appointment within thirty (30) days following the effective date of an agent's termination.

(4) The requirements of this section apply to both individual and business entity agent appointments.

Section 8. Record Correction. A licensee shall submit Form 8303, Record Correction Form with the commissioner to make a change or update the licensee's name and address.

Section 9. Material Incorporated by Reference.

(1) The following material is incorporated by reference***:[.]***

(a) Form CPL-01, "Certificate of Pre-licensing Course Completion," (8/2019);

(b) Form 8301, "NAIC Individual Insurance Producer License Application," (8/2019);

(c) Form 8301-BE, "Uniform Application for Business Entity Insurance License Application," (8/2019);

(d) Form 8302-AP, "Producer Appointment," (8/2019);

(e) Form 8302-TE, "Termination of Producer Appointment," (8/2019);

(f) Form 8305, "Business Entity Designation or Termination of Designation Form," (8/2019);

(g) Form 8304, "Examination Retake Form," (8/2019);

(h) Form KYP-01, "Provider Approval Application," (8/2019);

(i) Form CE/PL-100, "Course Approval Application," (8/2019);

(j) Form CE/PL-200, "Instructor Approval Application," (8/2019);

(k) Form CE-301, "Approved Continuing Education Certificate of Completion," (***12/2019[8/2019]***);

(l) Form ***CE[CA]*** AFF 304, "Affidavit for Exemption from Continuing Education," (8/2019);

(m) Form 8303, "Record Correction Form," (8/2019);

(n) Form MLW-01, "Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment," (8/2019);

(o) "NAIC Uniform Continuing Education Reciprocity Course Filing Form," (8/2019)***; and***

***(p) "Recommended Guidelines for Online Courses", National Association of Insurance Commissioners, 3/2015***.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

NANCY G. ATKINS, Commissioner
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: August 15, 2019

FILED WITH LRC: August 15, 2019 at 11 a.m.

CONTACT PERSON: Patrick D. O'Connor II, Deputy Commissioner - Policy, 215 W. Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email patrick.oconnor@ky.gov.

**PUBLIC PROTECTION CABINET**
**Department of Insurance**
**(As Amended at ARRS, November 12, 2019)**

**806 KAR 9:030. Adjuster licensing[~~Adjusters, apprentice adjusters; licenses,~~] restrictions.**

RELATES TO: KRS ***304.9-020, 304.9-430,[~~304.9-430(3)(a), 304.9-430(2)(g),~~]*** 304.9-432(2)(d)***, 304.9-440***
STATUTORY AUTHORITY: KRS 304.2-110(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code[~~as defined in KRS 304.1-010~~]. This administrative regulation restricts the persons whom an adjuster may represent to prevent[~~thus preventing any~~] conflicts of interest, and clarifies the circumstances under which the restriction for holding only one (1) apprentice adjuster license applies.

Section 1. (1) An independent, staff, or public adjuster licensed pursuant to the ***Kentucky*** Insurance Code[~~adjuster's license issued to an applicant pursuant to the provisions of the Insurance Code shall not authorize representing the interest of both insurer and the insured or claimant. A licensee~~] shall not represent the interest of both insurer and the insured or claimant.
(2) When applying for an adjuster license[~~the application is filed~~], an applicant shall elect to act solely on behalf of either:
(a) Insurers; or
(b) Persons claiming benefits under insurance or annuity contracts.
(3) A licensed adjuster[~~licensee~~] shall[~~to~~] act in a fiduciary capacity on behalf of[~~to~~] his or her principal.[~~(4) The commissioner shall not issue a license to a public adjuster until the prospective licensee posts a bond or irrevocable letter of credit in the amount of $20,000 and in accordance with 806 KAR 9:210.~~]

Section 2. An individual may hold only one (1) apprentice adjuster license until the individual is issued an adjuster license in accordance with KRS 304.9-430. Once an individual has held an adjuster license in accordance with KRS 304.9-430, the individual may again be eligible to hold one (1) apprentice adjuster license.

Section 3. ***Temporary Adjuster Registration for Catastrophe. Insurers seeking to temporarily register emergency independent or staff adjusters if there is a catastrophe under KRS 304.9-430(14) shall submit to the commissioner the Form 8307, Request for Unlicensed Adjuster Representing Insurer to Adjust Losses Resulting from a Catastrophe.***

***Section 4.*** Incorporation by Reference. (1) "Request for unlicensed adjuster representing an insurer to adjust losses resulting from a catastrophe, Form #8307" (05/2019), is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Kentucky Department of Insurance, 215 W. Main St., Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.

NANCY G. ATKINS, Commissioner
K. GAIL RUSSELL, Secretary
APPROVED BY AGENCY: May 14, 2019
FILED WITH LRC: May 15, 2019 at 11 a.m.
CONTACT PERSON: Patrick O'Connor, Deputy Commissioner, 215 W. Main St., Frankfort, Kentucky 40601, phone 502-782-5262, fax 502-564-6026, email patrick.oconnor@ky.gov.

**PUBLIC PROTECTION CABINET**
**Department of Insurance**
**(As Amended at ARRS, November 12, 2019)**

**806 KAR 9:110. Agent's rights after contract termination.**

RELATES TO: KRS 304.9-290
STATUTORY AUTHORITY: KRS 304.2-110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 ***authorizes[~~provides that~~]*** the Commissioner[~~Executive Director of the Office~~] of Insurance ***to promulgate[~~may make reasonable rules and~~]*** administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation sets forth the rights of a property or[~~a~~] casualty agent who is an independent contractor after termination of an agency contract.

Section 1. Prohibitions. **Except as provided in Section 2 of this administrative regulation,** no agency contract with a property or casualty agent who is an **independent agent** independent contractor[~~agent~~] compensated on a commission basis shall:
(1)[~~, except as provided in Section 2 of this administrative regulation,~~] Infringe upon the right of the agent, while licensed, to service runoff business after termination of the agency contract; or
(2)[~~nor shall it contain~~] Contain any provision which prevents the agent from being licensed with another insurer in order to avoid policy lapses which would otherwise occur after[~~such~~] termination.

Section 2. Permitted Provisions. An agency[~~Nothing herein in intended to infringe upon a company's~~] contract with a property or casualty agent who is an independent contractor compensated on a commission basis may provide that the following are[~~an agent or agency which provides that ownership of renewals and records, manuals, documents, and right of renewals is~~] the property of the company and shall[~~is to~~] be returned to the company upon cancellation or[~~and/or~~] termination of the contract:
(1) Renewals;
(2) Records;
(3) Manuals;
(4) Documents; and
(5) Right of renewals.***[~~Section 3. Incorporation by Reference.~~]***
***[~~(1) "Termination of Producer Appointment", Form #8302-TE, May, 2019, is incorporated by reference.~~]***
***[~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Kentucky Department of Insurance, 215 W. Main St., Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.~~]***

NANCY G. ATKINS, Commissioner
K. GAIL RUSSELL, Secretary
APPROVED BY AGENCY: August 15, 2019
FILED WITH LRC: August 15, 2019 at 11 a.m.
CONTACT PERSON: Patrick O'Connor II, Deputy Commissioner, 215 W. Main St., Frankfort, Kentucky 40601, phone 502-564-6026, fax 502-564-2269, email patrick.oconnor@ky.gov.

**PUBLIC PROTECTION CABINET**
**Department of Insurance**
**(As Amended at ARRS, November 12, 2019)**

**806 KAR 9:190. Disclosure requirements for financial institutions authorized to engage in insurance agency activities.**

RELATES TO: KRS ***286.3-030(4)[~~287.030(4)~~]***, 304.9-135
STATUTORY AUTHORITY: KRS 304.9-135(2)(g)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.9-135(2)(g) requires the Commissioner[~~executive director~~] to ***promulgate administrative regulations to*** specify the disclosure forms required by KRS 304.9-135(2)(b), (c), and (f). This administrative regulation specifies the disclosure forms for use by

financial institutions authorized to engage in insurance agency activities.

Section 1. A financial institution authorized by law to engage in insurance agency activities shall provide to an insurance consumer the disclosure forms***:***

***(1) Notice of Free Choice of Agent and Insurer; and***

***(2) Financial Institution Disclosures [~~in Section 2 of this administrative regulation~~]***. [~~Definitions. (1) "Financial institutions" is defined by KRS 304.9-135(1)(a).~~

~~(2) "Insurance agency activities" is defined by KRS 304.9-135(1)(b).~~

~~Section 2. Application. This administrative regulation shall apply to a financial institution authorized by law to engage in insurance agency activities in the state of Kentucky.~~

~~Section 3. Disclosures. A financial institution authorized to engage in insurance agency activities shall provide to an insurance consumer the following disclosure forms in accordance with KRS 304.9-135(2)(b), (c), and (f) which are incorporated by reference into this administrative regulation:~~

~~(1) FI-02, Notice of Free Choice of Agent and Insurer; and~~

~~(2) FI-03, Financial Institution Disclosures.~~]

Section 2[4]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) FI-02, "Notice of Free Choice of Agent and Insurer***",*** (7/2002 edition)***["]***[~~, Office of Insurance~~]; and

(b) FI-03, "Financial Institution Disclosures***",*** (7/2002 edition)***["]***[~~, Office of Insurance~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department[~~Office~~] of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

NANCY ATKINS, Commissioner
K. GAIL RUSSELL, Secretary
APPROVED BY AGENCY: ay 14, 2019
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CONTACT PERSON: Patrick O'Connor, Deputy Commissioner, 215 W. Main St., Frankfort, Kentucky 40601, phone 502-782-5262, fax 502-564-2669, email patrick.oconnor@ky.gov.

**PUBLIC PROTECTION CABINET**
**Department of Insurance**
**(As Amended at ARRS, November 12, 2019)**

**806 KAR 9:200. Volume of insurance agent exchange of business.**

RELATES TO: KRS 304.9-030, 304.9-080, 304.9-085, 304.9-230, 304.9-410, 304.10, 304.13-011(8)***[~~, 304.46~~]***

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-410(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner[~~that the Executive Director of Insurance~~] to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code[~~as defined in KRS 304.1-010~~]. KRS 304.9-410(3) requires the commissioner[~~Executive Director of Insurance~~] to promulgate an administrative regulation establishing the amount or volume of business that constitutes the occasional placement of business with insurers the agent is not appointed to represent[~~, as permitted by KRS 304.9-080(5) and 304.9-410(1)(a) and (2)~~]. This administrative regulation defines what constitutes occasional placement of business with insurers an agent is not appointed to represent.

Section 1. Definition.[~~Definitions. (1) "Executive director" means the Executive Director of the Office of Insurance.~~

~~(2)~~] "Total premium" means all payments received from insureds or prospective insureds as consideration for insurance, including all taxes and surcharges imposed by Kentucky law.

Section 2. Volume of Insurance Agent Exchange of Business. (1) An agent holding a license with the following lines of authority[~~a line of authority for property, casualty, surety, or with a limited line of authority as defined in KRS 304.9-230~~] shall not place insurance with a premium of more than twenty (20) percent of the agent's total premium for the preceding calendar year with insurers for which the agent holds no appointment:

(a) Property;

(b) Casualty;

(c) Life; ***or***

(d) Health***[~~; or~~***

***~~(e) Limited line of authority defined in KRS 304.9-230~~]***.

(2) Insurance placed by an agent through the following shall not be considered in determining whether the agent has violated this Section:

(a)[~~. Insurance placed by an agent through a~~] A residual market mechanism as defined in KRS 304.13-011(8);

(b)[~~, with a~~] A surplus lines insurer pursuant to KRS Chapter 304.10; ***or***

(c)[~~, through a~~] A managing general agent as defined in KRS 304.9-085***[~~;~~ ]***[~~,~~]***[~~or~~***

***~~(d)~~]***[through a]***[~~A voluntary risk sharing or market assistance plan pursuant to KRS Chapter 304.46~~]***[shall not be considered in determining whether the agent has violated this subsection.

~~(2) An agent holding a license with a line of authority for life or health or with a line of authority for limited line credit shall not place insurance with a premium of more than twenty (20) percent of the agent's total premium for the preceding calendar year with insurers for which the agent holds no appointment~~].

Section 3. Business Entity Licensees. For agents designated to act under a business entity agent license, the percentage limitations of Section 2 of this administrative regulation shall be measured by the total premium received by the business entity. Persons designated to act under a business entity agent license are subject to a single overall limit and shall not use their separate licenses to increase the volume of permissible exchange of business.

Section 4. Insurer Responsibility.[~~Responsibilities of Insurer; Validity or Insurance Issued in Violation of this Administrative Regulation.~~] (1) An insurer may assume that agents not appointed by the insurer and submitting applications to the insurer have not exceeded the limitations of Section 2 ***of this administrative regulation***[~~of this administrative regulation~~].

(2)[~~However,~~] An insurer that[~~which~~] knows or has reason to know[~~that~~] an agent not appointed by the insurer has exceeded the limitations established by Section 2 ***of this administrative regulation*** [~~is in violation of Section 2 of this administrative regulation~~] shall not issue a[~~an insurance~~] policy based on an application submitted by the[~~this~~] agent.

Section 5. Validity.[~~(2)~~] An insurance policy issued in violation of this administrative regulation shall be valid and enforceable.

NANCY ATKINS, Commissioner
K. GAIL RUSSELL, Secretary
APPROVED BY AGENCY: May 14, 2019
FILED WITH LRC: May 15, 2019 at 11 a.m.
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**PUBLIC PROTECTION CABINET**
**Department of Insurance**
**(As Amended at ARRS, November 12, 2019)**

**806 KAR 9:221. Repeal of 806 KAR 9:001, 806 KAR 9:070, and 806 KAR 9:220.**

RELATES TO: KRS 304.4-010, 304.9-030, 304.9-105, 304.9-160, 304.9-190, 304.9-230, 304.9-295, 304.9-320, 304.9-430,

304.9-505, 304.14-642, 304.15-700

STATUTORY AUTHORITY: KRS ***304.2[304.1]***-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner of insurance to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation repeals three ***(3)*** outdated ***administrative[(3)]*** regulations governing insurance producer licensing ***with the[whose]*** necessary substantive provisions***[are being]*** concurrently promulgated as part of a new comprehensive licensing administrative regulation***, 806 KAR 9:025,*** for ease of use by applicants, licensees, and department staff.

Section 1. The following administrative regulations are repealed:

(1) 806 KAR 9:001, Prelicensing courses of study; instructors;

(2) 806 KAR 9:070, Examinations; and

(3) 806 KAR 9:220, Continuing Education.

NANCY G. ATKINS, Commissioner
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: August 15, 2019

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**PUBLIC PROTECTION CABINET**
**Department of Insurance**
**(As Amended at ARRS, November 12, 2019)**

**806 KAR 9:310. Life settlement licenses[broker license and notification].**

RELATES TO: KRS 304.15-020, 304.15-700-304.15-725

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.15-700[(2)(a), (b)], 304.15-720

NECESSITY, FUNCTION, AND CONFORMITY: [EO 2008-507, signed June 6, 2008, created the Department of Insurance, headed by the Commissioner of Insurance.] KRS 304.2-110(1) authorizes the Commissioner[Executive Director] of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code[as defined in KRS 304.1-010]. KRS 304.15-700(2)(a) requires the commissioner[executive director] to promulgate administrative regulations to provide for the licensing of life settlement brokers and the termination or revocation of the license. KRS 304.15-720 authorizes the commissioner[executive director] to promulgate administrative regulations to implement KRS 304.15-700 to 304.15-720. KRS 304.15-700 prohibits any person from[and to establish appropriate requirements and fees for a life settlement broker license and for notifying the executive director that an individual licensed as a life insurance agent is] acting as a life settlement provider or broker without first obtaining the appropriate license from the commissioner. This administrative regulation establishes[the information to be included in the application for,] the requirements and fees for the issuance and continuation of life settlement provider and broker licenses[, and the fees for a viatical settlement broker license and notification].

Section 1.[Definitions. (1) "Commissioner" means the Commissioner of the Department of Insurance.

(2) "Department" means the Department of Insurance.

(3) "life settlement broker" is defined in KRS 304.15-020(8).

Section 2.] Individual Applicant. (1) An individual seeking[may be issued] a life settlement broker or provider license shall[license if the commissioner determines that the applicant]:

(a) Be[Is] at least twenty-one (21) years of age;

(b) Submit either:

1. A completed Form 8301, ***NAIC Individual Insurance Producer License Application*** incorporated by reference in ***806 KAR 9:025[806 KAR 9:430]***; or

2. A completed, electronic[Has completed a forty (40) hour life settlement prelicensing course of study, which has been approved by the executive director in accordance with 806 KAR 9:001;

(c) Has passed a life settlement examination in accordance with 806 KAR 9:070;

(d) Submits:

1. Electronically, a completed] Individual Uniform Application prescribed by the National Association of Insurance Commissioners (NAIC) and available on the National Insurance Producer Registry's (NIPR) Web site: www.NIPR.com;

(c) Remit the appropriate nonrefundable fee:

1. For a life settlement provider license, $500;

2. For a life settlement broker license, $250; and

(d) Have in force[or

2. Form 8301, incorporated by reference in 806 KAR 9:340;

(e) Submits Form 8301-BGC, incorporated by reference in 806 KAR 9:340;

(f) Remits the nonrefundable fee of $250;

(g) Submits Form CPL-01, incorporated by reference in 806 KAR 9:340;

(h) Provides proof of] financial responsibility in the amounts established by[in] KRS 304.15-700(5).

(2) In addition to the requirements of ***subsection (1) of this section[Section 1(1)]***, an individual seeking a life settlement broker license shall:

(a) Have completed a forty (40) hour life settlement[and in accordance with 806 KAR 9:210; and

(i) If using an assumed name, provides certified copies of certificates required in accordance with KRS 365.015.

(2) An individual notifying the commissioner that he or she is acting as a viatical settlement broker in accordance with KRS 304.15-700(2)(b) shall:

(a) Be exempt from the] prelicensing course of study approved by the commissioner; and

(b) Have passed a life settlement examination in accordance with ***806 KAR 9:025[806 KAR 9:070]***.

Section 2. Exempt individuals. ***A person licensed as a resident or nonresident insurance agent with a life line of authority[Viatical settlement brokers]*** under KRS 304.15-700(2)(b) shall within thirty (30) days of first acting as a life settlement broker without a license:

(1)[required by subsection (1)(b) and the examination required by subsection (1)(c) of this section;

(b)] Submit[electronically,] a completed electronic Individual Uniform Notification prescribed by the NAIC and available on the NIPR's[National Association of Insurance Commissioners and available on the National Insurance Producer Registry's] Web site: www.NIPR.com;

(2)[(c)] Remit the nonrefundable fee of $250; and

(3) Have in force[(d) Provide proof of] financial responsibility in the amounts established in KRS 304.15-700(2)(d).

Section 3. Background report. Resident individuals seeking licensure under Section 1 ***of this administrative regulation*** or providing notice of exemption under Section 2 ***of this administrative regulation*** shall submit a criminal background ***check*** report obtained through the Kentucky Administrative Office of the Courts.

Section 4. Continuing Education. (1) An individual licensed as either a life settlement broker or an insurance agent authorized to operate as a life settlement broker shall complete twenty-four (24) hours of continuing education approved by the commissioner, which shall include a minimum of:

(a) Three (3) hours in life insurance;

(b) Three (3) hours in life settlements; and

(c) Three (3) hours in ethics.

(2) The same hours may be credited towards the individual's continuing education requirements for the life settlement broker license and the applicable agent license, if any.

Section 5. Business Entity Applicant. [and in accordance with

~~806 KAR 9:210; and~~

~~(e) If using an assumed name, provide certified copies of certificates required in accordance with KRS 365.015.~~

~~Section 3. Business Entity Applicant. (1) A business entity may be issued a life settlement broker license if the commissioner determines the applicant has designated only individuals acting for, or authorized to act for, the business entity in accordance with KRS 304.9-133.~~

~~(2)~~] A business entity applying for a life settlement broker or provider license shall:

(1) Submit either:

(a) A completed Form 8301 - BE, ***Uniform Application for Business Entity Insurance License*** incorporated by reference in ***806 KAR 9:025[~~806 KAR 9:340~~]***; or

(b) A completed, electronic Uniform Business Entity Application prescribed by the NAIC and available on the NIPR's[~~(a) Submit:~~

~~1. Electronically, a Uniform Business Entity Application prescribed by the National Association of Insurance Commissioners and available on the National Insurance Producer Registry's~~] Web site: www.NIPR.com;

(2) Remit the appropriate nonrefundable fee:

(a) For a life settlement provider license, $1,500;

(b) For a life settlement broker license, $750; and

(3) Have in force financial responsibility in the amounts established in KRS 304.15-700(5)[~~or~~

~~2. Form 8301 - BE, incorporated by reference in 806 KAR 9:340;~~

~~(b) Remit the nonrefundable fee of $750;~~

~~(c) Provide proof of financial responsibility in the amounts established in KRS 304.15-700(5) and in accordance with 806 KAR 9:210; and~~

~~(d) Provide the following documentation, as applicable:~~

~~1. Certificate of authority from the Kentucky Secretary of State;~~

~~2. Documentation supporting the applicant's answers on the application; and~~

~~3. If using an assumed name, certified copies of certificates required in accordance with KRS 365.015~~].

Section 6[4]. Renewal and Continuation of License. (1) Each life settlement[~~broker~~] license shall continue in force and renew in accordance with KRS 304.9-260. The renewal fee shall be nonrefundable and in the amount as follows:

(a) $250 for an individual broker licensee;[~~or~~]

(b) $500 for an individual provider licensee;

(c) $750 for a business entity broker licensee; and

(d) $1500 for a business entity provider licensee.

(2) A[~~licensed~~] life settlement broker or provider licensee or[~~and~~] an insurance agent authorized to operate as a life settlement broker[~~ in accordance with KRS 304.15-700(2)(b) and Section 2(2) of this administrative regulation~~] shall notify the department [~~of Insurance~~] in writing within thirty (30) days of any change to the information in the application, notification, or supporting[~~in the~~] documents submitted seeking licensure or providing notice of exemption[~~required to be submitted in accordance with Section 2 or 3 of this administrative regulation.~~

~~Section 5. Continuing Education. (1) An individual licensed as a life settlement broker and an insurance agent authorized to operate as a life settlement broker in accordance with KRS 304.15-700(2)(b) and Section 2(2) of this administrative regulation shall complete twenty-four (24) hours of office-approved continuing education in accordance with KRS 304.9-295.~~

~~(2) The required continuing education hours shall include a minimum of:~~

~~(a) Three (3) hours in life insurance;~~

~~(b) Three (3) hours in life settlements; and~~

~~(c) Three (3) hours in ethics.~~

~~(3) The same hours may be credited towards the individual's continuing education requirements for the life settlement broker license and the applicable agent license, if any~~].

NANCY G. ATKINS, Commissioner
K. GAIL RUSSELL, Secretary

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**PUBLIC PROTECTION CABINET**
**Department Of Insurance**
**(As Amended at ARRS, November 12, 2019)**

**806 KAR 9:350. Recognition of financial planning certification and designation for receipt of fees and commissions.**

RELATES TO: ***KRS[~~292.330(1),~~]*** 304.9-350
STATUTORY AUTHORITY: KRS 304.2-110, 304.9-350(8)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner[~~EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance. KRS 304.2-110 authorizes the Executive Director of the Office of Insurance~~] to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code[~~, as defined in KRS 304.1-010~~]. KRS 304.9-350(8) authorizes the commissioner[~~Office of Insurance~~] to promulgate an administrative regulation to recognize a formal financial planning certification or designation for the purposes of receiving a fee for financial planning services and the sale, solicitation or negotiation of life insurance or annuities for the same insurance risk. This administrative regulation sets forth the listing of recognized financial planning certifications and designations.

Section 1. Recognition of Financial Planning Certification and Designation. For purposes of KRS 304.9-350(8), the Department of Insurance recognizes the following financial planning certifications and designations:

(1) Accredited Asset Management Specialist (AAMS);
(2) Accredited Estate Planner (AEP);
(3) Associate Financial Advisor (AFA);
(4) Accredited Financial Counselor (AFC);
(5) Associate, Financial Services Institute (AFSI);
(6) Accredited Wealth Manager Advisor (AWMA);
(7) Board Certified in Estate Planning (BCE);
(8) Chartered Asset Manager (CAM);
(9) Chartered Advisor for Senior Living (CASL);
(10) Certificate in Investment Performance Measurement (CIPM);
(11) Certified Estate Advisor (CEA);
(12) Certified Estate Planner (CEP);
(13) Certified Financial Planner (CFP);
(14) Certified Fund Specialist (CFS);
(15) Certified Investment Management Analyst (CIMA);
(16) Certified Pension Consultant (CPC);
(17) Certified Public Accountant (CPA);
(18) Chartered Advisor in Philanthropy**;**
(19) Chartered Financial Analyst (CFA);
(20) Chartered Financial Consultant (ChFC);
(21) Chartered Life Underwriter (CLU);
(22) Chartered Market Technician (CMT);
(23) Chartered Mutual Fund Counselor (CMFC);
(24) Chartered Portfolio Manager (CPM);
(25) Chartered Retirement Planning Counselor (CRPC);
(26) Chartered Retirement Plan Specialist (CRPS);
(27) Chartered Senior Financial Planner (CSFP);
(28)Chartered Trust and Estate Planner (CTEP);
(29) Fellow, Financial Services Institute (FFSI);
(30) Fellow of the Life Management Institute (FLMI);
(31) Financial Services Specialist (FSS);
(32) Master Financial Advisor (MFA);
(33) Master Financial Manager (MFM);
(34) Master Financial Professional (MFP);
(35) Masters of Science in Financial Services (MSFS);
(36) Personal Financial Specialist (PFS);

(37) Professional Financial Advisor (PFA);
(38) Qualified Plan Financial Consultant (QPFC);
(39) Registered Financial Specialist (RFS);
(40) Registered Financial Planner (RFP); or
(41) Senior Registered Financial Planner (SRFP).[~~Section 2. Nothing in this administrative regulation shall exempt an agent who holds a certification or designation recognized in Section 1 of this administrative regulation from the compliance with the registration requirements of KRS 292.330(1) if the agent transacts business in this state as a broker-dealer, investment adviser, agent, or investment adviser representative.~~]

NANCY ATKINS, Commissioner
K. GAIL RUSSELL, Secretary
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**CABINET FOR HEALTH AND FAMILY SERVICES**
**Office of Inspector General**
**Division of Health Care**
**(As Amended at ARRS, November 12, 2019)**

**902 KAR 20:370. Operations and services; private duty nursing agencies.**

RELATES TO: KRS 2.015, 216B.020,[~~216B.010, 216B.015, 216B.040, 216B.042, 216B.045-216B.055, 216B.075, 216B.105-216B.131, 216B.990, 311.560(4), 314.011(8),~~] 314.041, 314.051, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 - 1320d-8
STATUTORY AUTHORITY: KRS 216B.042(1)
NECESSITY, FUNCTION AND CONFORMITY: KRS 216B.042(1) requires the[~~Kentucky~~] Cabinet for Health and Family Services to promulgate **administrative[~~administration~~]** regulations necessary for the proper administration of the licensure function and establish licensure standards to ensure safe, adequate, and efficient [~~regulate~~] health facilities and health services. This administrative regulation establishes minimum licensure requirements for the operation of[~~,~~] and[~~nursing~~] services provided by[~~,~~] private duty nursing agencies.

Section 1. Definitions. (1)[~~"Agency" means a private duty nursing agency.~~
~~(2) "Governing authority" or "licensee" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.~~
~~(3) "License" means an authorization issued by the cabinet for the purpose of operating a private duty nursing agency.~~
~~(4) "Licensed practical nurse" or "LPN" means a person licensed pursuant to KRS 314.051.~~
~~(5)~~] "Private duty nursing agency" means a public or private organization, including any partnership, corporation, or other legal entity, that provides or arranges for the provision of private duty nursing services.
(2) "Private duty nursing services" means the delivery of skilled nursing services as defined by subsection (3) of this section**[~~to a patient who has a medically predictable, recurring need for services on a continuous basis rather than part-time or short-term intermittent nursing care~~]**.
(3) "Skilled nursing services" means the delivery of nursing care to a patient of a private duty nursing agency that:
(a) Exceeds the level of routine health monitoring;
(b) Is clinically appropriate;
(c) **Is provided on a continuous basis or as part-time or short-term nursing care;**
**(d)** Is subject to:
1. A nursing reassessment no less than every ninety (90) days; and
2. Frequent changes in the plan of treatment;
**(e)[~~(d)~~]** Is based on the expectation that the service will improve, restore, or maintain function, or slow the patient's decline of the disease or functional ability; and
**(f)[~~(e)~~]** Includes skilled interventions provided directly by a licensed nurse. Examples of skilled interventions may include:
1. Bowel and bladder care;
2. Administering medications or oxygen;
3. **Furnishing infusion therapy services;**
**4. Medication setups;**
**5.** Treating decubitus ulcers**, skin breakdown,** or other types of wound care; or
**6.[~~4.~~]** Ventilation care.[~~an entity in the business of providing licensed nursing care to a patient in his or her home for a continuous block of time, in increments of at least four (4) hours, in which the private duty nursing agency supervises nursing care provided by agency personnel. It shall not include a registered nurse providing nursing services as an independent practitioner.~~
~~(6) "Registered nurse" or "RN" means a person licensed pursuant to KRS 314.041.~~]

Section 2. Scope. (1) Private duty nursing services shall be:
(a) Ordered and directed by the treating**, licensed** practitioner or specialist after a face-to-face evaluation of the patient**, which may be provided as a telehealth encounter**;
(b) Provided by:
1. A registered nurse (RN) licensed in accordance with KRS 314.041; or
2. A licensed practical nurse (LPN) licensed in accordance with KRS 314.051; and
(c) Provided to a patient in his or her temporary or permanent place of residence or other community-based setting, including:
1. The patient's home; or
2. Outside of the patient's home, as necessitated by normal life activities.
(2) A private duty nursing agency shall not include:
(a) A registered nurse who provides nursing services as an independent practitioner; or
(b) An entity that seeks certification under Title XVIII of the Social Security Act.

Section 3. Administration. (1) The licensee shall be legally responsible for:
(a) The operation of the private duty nursing agency; and
(b)[~~Have legal responsibility for the service and for~~] Compliance with [~~relevant~~] federal, state, and local laws and administrative regulations pertaining to the operation of the agency.
(2) The licensee shall:
(a)[~~law; (b)~~] Establish lines of authority;
(b)[~~and (c)~~] Designate an administrator who shall be responsible for the daily operation of the agency;
(c)[~~. (2) Policies. The licensee shall~~] Establish and implement [~~enforce~~] written administrative policies covering all aspects of operation, including:
1.[~~(a)~~] A description of the agency's organizational structure, staffing, and allocation of responsibility and accountability;
2.[~~(b) A description of linkages with inpatient facilities and other providers; (c)~~] Policies and procedures for the evaluation[~~guidance and control~~] of personnel performance; **and**
3.[~~(d)~~] A narrative describing in detail:
a.[~~1.~~] The services offered by the agency; and
b.[~~2. Methods and protocols for service delivery; and~~
~~3.~~] Qualifications of personnel involved in the delivery of services[~~the service~~];
(d) Establish[~~(e) A description of the administrative and patient care records and reports; (f)~~] procedures for[~~to be followed in~~] the handling and administration of drugs and biologicals; and
(e) Maintain policies regarding the delivery and supervision of [~~(g)~~] patient care that shall:
1. Be[~~policies~~] developed by[~~with the advice of~~] a group of professional health providers, including at least one (1)[~~or more~~] physician **or[~~and~~]** one (1)[~~or more~~] registered nurse; and
2.[~~, and shall~~] Include the following:
a.[~~1.~~] A description of the services provided;
b.[~~2.~~] A requirement for a written [~~nursing care~~] plan of

treatment for each [a] patient who receives private duty nursing services;

c.[3.] Guidelines to ensure coordination of treatment with other [licensed] health facilities and practitioners that deliver services to patients of the agency[care providers servicing a patient];

d.[4.] Guidelines for the medical management of health problems, including [a. the] conditions that require[requiring] medical consultation or patient referral;

e.[and b. Maintenance of health records; 5.] Procedures for the annual review and evaluation of the services provided;

f.[6.] Guidelines for patient and environment assessment; and

g.[7.] Guidelines to ensure that a patient is receiving adequate services for assistance with daily living activities.

Section 4. [(3)] Personnel. (1) Each private duty nursing agency [(a) Medical director. The agency] shall have:

(a) A **clinical [medical]** director who is:[shall be:]

1. A Kentucky-licensed physician **or advanced practice registered nurse** with specialized training and experience in **the range of[medical]** services provided by the agency; and

2. Responsible for **overseeing the clinical activities of[medical aspects of medical services provided by]** the agency; and[.]

(b)[The agency shall provide] Adequate staffing to provide for effective patient care[,] in accordance with the terms and conditions of the contract with the patient.

(2) Each private duty nursing agency's[(c) The licensee shall provide] written personnel policies[, which] shall be:

(a)[1.] Available to each employee;

(b)[2.] Reviewed on an annual basis; and

(c)[3.] Revised as necessary.

(3)[(d)] There shall be a written job description for each position that[, which] shall be reviewed and revised as necessary.

(4)[(e)] There shall be an employee health and infection control program, including tuberculosis screening and[with provisions for tuberculin] testing in accordance with 902 KAR 20:205[and titers necessary to the nursing service to be performed].

(5)[(f)] The private duty nursing agency[licensee] shall maintain a current personnel record for each employee, including:

(a)[. Data maintained shall include:

1. Name, address and Social Security number;

2.] Evidence of each employee's current registration, certification, or licensure, if applicable;

(b) Documentation of the employee's[3. Records of] training and experience;

(c) Evidence of an annual[4. Records of] performance evaluation;

(d) Documentation of compliance with the agency's health and infection control program;

(e) A[5. Current negative tuberculin skin test or chest x-ray for an employee having direct contact with a patient; and 6.] preemployment background check in which the agency shall not employ an individual in a position that involves providing direct services if the individual:

1. Is listed on the:

a. Nurse aide or home health aide abuse registry pursuant to 906 KAR 1:100; ***[or]***

b. Caregiver misconduct registry pursuant to 922 KAR 5:120; or

***c. Child abuse and neglect central registry pursuant to 922 KAR 1:470; or***

2. Has a conviction of, or a plea of guilty, an Alford plea, or a plea of nolo contendere to:

a. A felony **offense[offence]** that is related to:

(i) Theft;

(ii) Abuse, possession, or sale of illegal drugs;

(iii) Abuse, neglect, or exploitation of a child or an adult; or

(iv) A sexual crime; or

b. A misdemeanor offense related to abuse, neglect, or exploitation of an adult ***or child***; and

(f) Evidence of orientation and, if needed, on-the-job training related to the employee's job responsibilities[criminal conviction information for private duty nursing agency personnel who provide nursing care to a patient in his or her home].

(6) [(g)] An employee with[of the program who has] direct patient care responsibilities shall have current cardiopulmonary resuscitation (CPR) certification from[either] the American Heart Association, [or the] American Red Cross, or equivalent.

**(7) Each licensed nurse of a private duty nursing agency shall provide services that:**

**(a) Are commensurate with the nurse's educational preparation and clinical competence;**

**(b) Address the nursing needs of the patient; and**

**(c) Are delivered in accordance with the patient's plan of treatment.**

Section 5. Patient Records. (1) Each private duty nursing agency shall maintain a clinical record for each patient that includes:

(a) Pertinent past and current[(h) In-service training. An employee shall participate in ongoing in-service training programs relating to the employee's job activities.

(4) Medical records.

(a) The service shall maintain a medical record for each patient, to include the following:

1.] medical, nursing, and social history[relevant to the service provided], including information obtained[data obtainable] from other providers;

(b)[2.] Name of the referring physician, or other ordering practitioner, if any, acting within the statutory scope of practice;

(c)[3.] Orders of the referring physician, or other ordering practitioner, if any, acting within the statutory scope of practice;

(d)[4.] Description of each contact, including the:

1.[a.] Condition or reason necessitating contact;

2.[b.] Assessment;

3.[c.] Service provided;

4.[d.] Medication and treatment prescribed; and

5.[e.] Disposition made; and

(e)[5.] Documentation of referrals made, including:

1.[a.] Reason for referral;

2.[b.] To whom the patient was referred; and

3. [c.] Information obtained from a referral source.

(2) Ownership.

(a) Medical records shall be the property of the private duty nursing agency.

(b) The original medical record shall not be removed except by court order.

(c) Copies of medical records or portions thereof may be used and disclosed in accordance with the requirements established in this administrative regulation.

(3) Confidentiality and Security: Use and Disclosure.

(a) The agency shall maintain the confidentiality and security of patient records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.

(b) The private duty nursing agency may use and disclose patient records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

(c) A private duty nursing agency may establish higher levels of confidentiality and security than those required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.[(b) Confidentiality of patient records shall be maintained at all times.

(c) Transfer of records. If the patient moves to another source of care, the agency shall:

1. Establish systematic procedures to assist in continuity of care; and

2. Transfer medical records if requested and upon the agency receiving a release signed by the patient or the patient's agent.]

(d) Retention of records.[1.] After a patient's[the] death or discharge[of an adult patient], the completed medical record shall be placed in an inactive file and:

1. Retained for six (6)[five (5)] years; or

2. [After the death or discharge of a minor patient, the record shall be placed in an inactive file and retained for five (5) years

~~from the date of the event, or~~] Three (3) years after the patient reaches the age of majority in accordance with KRS 2.015, whichever is longer.

(4)[~~(e)~~] The agency shall:

(a) Designate a specific location for the maintenance and storage of the agency's medical records;

(b)[~~. (f) The agency shall~~] Have provisions for storage of medical records in the event the agency ceases to operate; and

(c)[~~. (g) The licensee shall~~] Safeguard the record and its content against loss, defacement, or tampering.

Section 6. Private Duty[~~3.~~] Nursing Services [~~Provided by Private Duty Nursing Agencies~~]. (1) A private duty nursing agency shall develop[~~Nursing services provided by a private duty nursing agency, if ordered by a physician or other ordering practitioner acting within the statutory scope of practice, shall be provided in accordance with~~] a plan of treatment for each patient receiving private duty nursing services.

(2)[~~(a)~~] The plan of treatment shall be developed in consultation with the:

(a) Prescribing practitioner;

(b)[~~,~~] Agency personnel;[~~,~~] and

(c)[~~the~~] Patient, patient's family[~~, family~~] member, or patient's responsible party.

(3)[~~(b)~~] The plan of treatment shall be reviewed:

(a) By the ordering practitioner in consultation with:

1. Agency personnel; and

2. The patient, patient's family member, or patient's responsible party; and[~~,~~]

(b) At[~~such~~] intervals as the severity of the patient's illness requires[~~,~~] or at least once every two (2) months.

(4) Services[~~(2) Each private duty nursing agency service~~] shall be nonabusive and provided in a manner that[~~which~~] ensures the greatest amount of safety and security for the patient.

(5)[~~(3)~~] Private duty nursing agency personnel shall ensure that medical waste generated as a result of a service shall be removed from a patient's home and disposed of properly.

Section 7. Licensure. Within ninety (90) days from the **most recent** effective date of this administrative regulation, the cabinet shall:

(1) Convert any licensed home health agency that is not certified under Title XVIII of the Social Security Act to a licensed private duty nursing agency;**[and]**

(2) Not require approval of a new certificate of need to convert an existing home health agency license to a private duty nursing license**; and**

**(3) Require a home health agency that converts its license to a private duty nursing license to comply with the accreditation requirements of Section 8(1)(b) of this administrative regulation**.

**Section 8. Accreditation. (1) A private duty nursing agency shall be accredited by the Joint Commission, Community Health Accreditation Program, Accreditation Commission for Health Care, or an accrediting body with equivalent standards within one (1) year from the date of:**

**(a) Initial, provisional licensure; or**

**(b) The most recent effective date of this administrative regulation.**

**(2)(a) If a private duty nursing agency has not obtained accreditation in accordance with subsection (1) of this section, the agency may request an extension to complete the accreditation process.**

**(b) A request for extension shall:**

**1. Be submitted in writing to the Office of Inspector General at least sixty (60) days prior to the:**

**a. Date of the licensee's first annual renewal; or**

**b. One (1) year anniversary from the most effective date of this administrative regulation;**

**2. Include evidence that the agency:**

**a. Has initiated the process of becoming accredited within sixty (60) days of the:**

**(i) Date of provisional licensure; or**

**(ii) Most recent effective date of this administrative regulation; and**

**b. Is continuing its efforts to obtain accreditation; and**

**3. Include an estimated timeframe by which approval of accreditation is anticipated, not to exceed two (2) years from the:**

**a. Date of provisional licensure; or**

**b. Most recent effective date of this administrative regulation.**

**(3) A licensee's provisional licensure status shall end on the date that the agency obtains accreditation.**

**(4) Proof of accreditation shall be provided to the Office of Inspector General:**

**(a) Upon receiving accreditation; and**

**(b) Yearly at the time of annual renewal.**

**(5) If a private duty nursing agency loses its accreditation or becomes accredited by a different accrediting organization, the licensee shall notify the Office of Inspector General no later than thirty (30) days from the date that:**

**(a) The licensee's accreditation was terminated; or**

**(b) Accreditation by a different organization that meets the requirements of subsection (1) of this section took effect.**

**(6) The cabinet shall revoke a license if a private duty nursing agency fails to meet one (1) of the following requirements:**

**(a) Become accredited in accordance with subsection (1) of this section;**

**(b) Request an extension in accordance with subsection (2) of this section;**

**(c) Achieve accreditation within two (2) years from the:**

**1. Date of provisional licensure, if a request for extension is submitted; or**

**2. Most recent effective date of this administrative regulation, if a request for extension is submitted; or**

**(d) Maintain accreditation.**[~~Section 4. Licensing Procedures. (1) Initial licensure.~~

~~(a) A private duty nursing agency applying for a license to operate shall return a completed L&R 144 to the Office of Inspector General along with the initial licensing fee of $134.~~

~~(a) The Office of the Inspector General shall conduct an initial licensing inspection pursuant to 902 KAR 20:008.~~

~~(2) Relicensure. Prior to the date that the license to operate expires, a private duty nursing agency shall send a completed L&R 144 to the Office of the Inspector General along with the annual relicensure fee of $134.~~

~~Section 5. Incorporation by Reference. (1) "Form L&R 144, Application for a License to Operate a Health Facility or Service, January 2001 edition" is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Inspector General 275 East Main Street, Fifth Floor East, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

STEVEN D. DAVIS, Inspector General
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 14, 2019

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**CABINET FOR HEALTH AND FAMILY SERVICES**
**Department for Medicaid Services**
**Division of Policy and Operations**
**(As Amended at ARRS, November 12, 2019)**

**907 KAR 15:005. Definitions for 907 KAR Chapter 15.**

RELATES TO: KRS 194A.025(3), 205.510(11), 205.8451, 309.080, 309.130(2), (3), 311.840(3), 314.011(5), (7), 319.053, 319.056, 319.064, 319C.010(6), (7), 335.080, 335.100, 335.300(2),

(3), 335.500(3), (4), 42 C.F.R. 400.203, 438.2, 441.540, 29 U.S.C. 794

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the definitions for 907 KAR Chapter 15.

Section 1. Definitions. (1) "Adult peer support specialist" means an individual who meets the requirements for an adult peer support specialist established in 908 KAR 2:220.

(2) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(3) "Approved behavioral health practitioner[~~services provider~~]" means an independently licensed[a] practitioner who is:

(a) A physician;

(b) A psychiatrist;

(c) An advanced practice registered nurse;

(d) A physician assistant;

(e) A licensed psychologist;

(f) A licensed psychological practitioner;

(g) A certified psychologist with autonomous functioning;

(h) A licensed clinical social worker;

(i) A licensed professional clinical counselor;

(j) A licensed marriage and family therapist;

(k)[~~A licensed psychological associate working under the supervision of a board-approved licensed psychologist;~~

~~(l) A certified psychologist working under the supervision of a board-approved licensed psychologist;~~

~~(m) A marriage and family therapy associate working under the supervision of a billing supervisor;~~

~~(n) A certified social worker working under the supervision of a billing supervisor;~~

~~(o) A licensed professional counselor associate working under the supervision of a billing supervisor;~~

~~(p)~~] A licensed professional art therapist;

(l)[~~(q) A licensed professional art therapist associate working under the supervision of a billing supervisor;~~

~~(r)~~] A licensed clinical alcohol and drug counselor; or

(m)[~~(s) A licensed clinical alcohol and drug counselor associate working under the supervision of a billing supervisor;~~

~~(t) A certified alcohol and drug counselor working under the supervision of a billing supervisor;~~

~~(u)~~] A licensed behavior analyst[~~; or~~

~~(v) A licensed assistant behavior analyst working under the supervision of a billing supervisor~~].

(4) "Approved behavioral health practitioner under supervision" means an individual under billing supervision of an approved behavioral health practitioner who is:

(a)1. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

2. A certified psychologist working under the supervision of a board-approved licensed psychologist;

3. A marriage and family therapy associate;

4. A certified social worker;

5. A licensed professional counselor associate;

6. A licensed professional art therapist associate;

7. A licensed clinical alcohol and drug counselor associate;

8. A certified alcohol and drug counselor; or

9. A licensed assistant behavior analyst; and

(b) Employed by or under contract with the same billing provider as the billing supervisor.

(5) "ASAM Criteria" means the most recent edition of "The ASAM Criteria, Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions" published by the American Society of Addiction Medicine.

(6) "Behavioral health multi-specialty group" means a group of more than one (1) individually licensed behavioral health practitioners of varying practitioner types who form a business entity to:

(a) Render behavioral health services; and

(b) Bill the Medicaid Program for services rendered to Medicaid recipients.

(7)[~~(5) "Behavioral health practitioner under supervision" means an individual who is:~~

~~(a)1. A licensed psychological associate;~~

~~2. A licensed professional counselor associate;~~

~~3. A licensed clinical alcohol and drug counselor associate;~~

~~4. A certified social worker;~~

~~5. A marriage and family therapy associate;~~

~~6. A licensed professional art therapist associate;~~

~~7. A licensed assistant behavior analyst;~~

~~8. A certified psychologist; or~~

~~9. A certified alcohol and drug counselor; and~~

~~(b) Employed by or under contract with the same billing provider as the billing supervisor.~~

~~(6)~~] "Behavioral health provider group" means a group of more than one (1) individually licensed behavioral health practitioners of the same practitioner type who form a business entity to:

(a) Render behavioral health services; and

(b) Bill the Medicaid Program for services rendered to Medicaid recipients.

(8)[~~(7)~~] "Behavioral health services organization" means an entity that is licensed as a behavioral health services organization pursuant to:

(a) 902 KAR 20:430 for a behavioral health services organization tier I (BHSO I);

(b) 908 KAR ***1:370[~~3:170~~]*** and 908 KAR ***1:374[~~3:174~~]*** for a behavioral health services organization tier II (BHSO II); or

(c) 908 KAR ***1:370[~~3:170~~]*** and 908 KAR ***1:372[~~3:172~~]*** for a behavioral health services organization tier III (BHSO III).

(9)[~~(8)~~] "Billing provider" means the individual[~~who~~], group of individual providers [~~that~~], or organization that:

(a) Is authorized to bill the department or a managed care organization for a service; and

(b) Is eligible to be reimbursed by the department or a managed care organization for a service.

(10)[~~(9)~~] "Billing supervisor" means an individual who is:

(a)1. A physician;

2. A psychiatrist;

3. An advanced practice registered nurse;

4. A physician assistant;

5. A licensed clinical alcohol and drug counselor;

6.[~~5.~~] A licensed psychologist;

7.[~~6.~~] A licensed clinical social worker;

8.[~~7.~~] A licensed professional clinical counselor;

9.[~~8.~~] A licensed psychological practitioner;

10.[~~9.~~] A certified psychologist with autonomous functioning;

11.[~~10.~~] A licensed marriage and family therapist;

12.[~~11.~~] A licensed professional art therapist; or

13.[~~12.~~] A licensed behavior analyst; and

(b) Employed by or under contract with the same billing provider as the behavioral health practitioner under supervision who renders services under the supervision of the billing supervisor.

(11)[~~(10)~~] "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(12)[~~(11)~~] "Certified psychologist" means an individual who is a certified psychologist pursuant to KRS 319.056.

(13)[~~(12)~~] "Certified psychologist with autonomous functioning" means an individual who is a certified psychologist with autonomous functioning pursuant to KRS 319.056.

(14)[~~(13)~~] "Certified social worker" means an individual who meets the requirements established in KRS 335.080.

(15)[~~(14)~~] "Chemical dependency treatment center" means an entity that is licensed as a chemical dependency treatment center pursuant to 902 KAR 20:160.

(16)[~~(15)~~] "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.

(17) "Co-occurring disorder" means a mental health and substance use disorder.

(18)[~~(16)~~] "Department" means the Department for Medicaid

Services or its designee.

(19)[~~(17)~~] "Electronic signature" is defined by KRS 369.102(8).

(20)[~~(18)~~] "Enrollee" means a recipient who is enrolled with a managed care organization.

(21)[~~(19)~~] "Face-to-face" means occurring[~~:~~

~~(a)~~] in person[~~; or~~

~~(b) If authorized by 907 KAR 3:170, via a real-time, electronic communication that involves two (2) way interactive video and audio communication~~].

(22)[~~(20)~~] "Family peer support specialist" means an individual who meets the requirements for a Kentucky family peer support specialist established in 908 KAR 2:230.

(23)[~~(21)~~] "Federal financial participation" is defined by 42 C.F.R. 400.203.

(24)[~~(22)~~] "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(25)[~~(23)~~] "Kentucky-specific Medicare Physician Fee Schedule" means the list or process by which[~~of~~] current reimbursement rates for physician services are established or published by the department[~~in accordance with 907 KAR 3:010, Section 3~~].

(26)[~~(24)~~] "Level I psychiatric residential treatment facility" means an entity that is licensed as a Level I psychiatric residential treatment facility pursuant to 902 KAR 20:320.

(27)[~~(25)~~] "Level II psychiatric residential treatment facility" means an entity that is licensed as a Level II psychiatric residential treatment facility pursuant to 902 KAR 20:320.

(28)[~~(26)~~] "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(29)[~~(27)~~] "Licensed behavior analyst" is defined by KRS 319C.010(6).

(30)[~~(28)~~] "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).

(31)[~~(29)~~] "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).

(32)[~~(30)~~] "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(33)[~~(31)~~] "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(34)[~~(32)~~] "Licensed professional art therapist" is defined by KRS 309.130(2).

(35)[~~(33)~~] "Licensed professional art therapist associate" is defined by KRS 309.130(3).

(36)[~~(34)~~] "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(37)[~~(35)~~] "Licensed professional counselor associate" is defined by KRS 335.500(4).

(38)[~~(36)~~] "Licensed psychological associate" means an individual who meets the requirements established in KRS 319.064.

(39)[~~(37)~~] "Licensed psychological practitioner" means an individual who meets the requirements established in KRS 319.053.

(40)[~~(38)~~] "Licensed psychologist" means an individual who currently possesses a licensed psychologist license in accordance with KRS 319.010(6).

(41)[~~(39)~~] "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(42)[~~(40)~~] "Marriage and family therapy associate" is defined by KRS 335.300(3).

(43)[~~(41)~~] "Medicaid-covered service" means a service covered by the department as established in Title 907 of the Kentucky Administrative Regulations.

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

(45) "Medication assisted treatment" means the treatment of a substance use disorder with approved medications in combination with counseling, behavioral therapies, and other supports.

(46)[~~(43)~~] "Physician" is defined by KRS 205.510(11).

(47)[~~(44)~~] "Physician assistant" is defined by KRS 311.840(3).

(48) "Practitioner working under supervision" means:

(a) An approved behavioral health practitioner under supervision;

(b) A registered ***behavior[~~behavioral health~~]*** technician;

(c) A community support associate; or

(d) A peer support specialist.

(49)[~~(45)~~] "Provider" is defined by KRS 205.8451(7).

(50)[~~(46)~~] "Provider abuse" is defined by KRS 205.8451(8).

(51)[~~(47)~~] "Psychiatric hospital" means an entity licensed as a psychiatric hospital pursuant to 902 KAR 20:180.

(52)[~~(48)~~] "Recipient" is defined by KRS 205.8451(9).

(53)[~~(49)~~] "Recipient abuse" is defined by KRS 205.8451(10).

(54)[~~(50)~~] "Recipient's representative" means:

(a) For a recipient who is authorized by Kentucky law to provide written consent, an individual acting on behalf of, and with written consent from, the recipient; or

(b) A legal guardian.

(55)[~~(51)~~] "Registered alcohol and drug peer support specialist" is defined by KRS 309.080(8).

(56) "Registered ***behavior[~~behavioral~~]*** technician" means an individual who meets the following requirements provided by the Behavior Analyst Certification Board:

(a) Be at least eighteen (18) years of age;

(b) Have a high school diploma or its equivalent; ***and***

(c) ***Within six (6) months of hire for a new employee or within six (6) months of the effective date of this administrative regulation for an existing employee:***

***1.*** Complete a training program ***that is:***

***a.*** Approved by the Behavior Analyst Certification Board***;***

***b. Based on the current edition of the RBT Task List endorsed by the Behavior Analyst Certification Board; and***

***c.*** Conducted by Behavior Analyst Certification Board certificants;

***2.[~~(d)~~]*** Pass the Registered Behavior Technician Competency Assessment administered by a Behavior Analyst Certification Board certificant ***or by an assistant assessor overseen by a Behavior Analyst Certification Board certificant***; and

***3.[~~(e)~~]*** Pass the Registered Behavior Technician exam provided by the Behavior Analyst Certification Board.

(57)[~~(52)~~] "Registered nurse" is defined by KRS 314.011(5).

(58)[~~(53)~~] "Residential crisis stabilization unit" means an entity that is licensed as a residential crisis stabilization unit pursuant to 902 KAR 20:440.

(59)[~~(54)~~] "Section 504 plan" means a plan developed:

(a) Under the auspices of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (Section 504); and

(b) To ensure that a child who has a disability identified under the law and is attending an elementary or secondary educational institution receives accommodations to ensure the child's academic success and access to the learning environment.

(60) "Telehealth" is defined by KRS 205.510(15).

(61) "Withdrawal management" means a set of interventions aimed at managing acute intoxication and withdrawal based on the severity of the illness and co-occurring conditions identified through a comprehensive biopsychosocial assessment with linkage to addiction management services, and incorporated into a recipient's care as needed throughout the appropriate levels of care.

(62)[~~(55)~~] "Youth peer support specialist" means an individual who meets the requirements established for a Kentucky youth peer support specialist established in 908 KAR 2:240.

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 3, 2019

FILED WITH LRC: June 28, 2019 at 4 p.m.

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**CABINET FOR HEALTH AND FAMILY SERVICES**
**Department for Medicaid Services**
**Division of Policy and Operations**
**(As Amended at ARRS, November 12, 2019)**

**907 KAR 15:010. Coverage provisions and requirements regarding behavioral health services provided by individual approved behavioral health practitioners[providers], behavioral health provider groups, and behavioral health multi-specialty groups.**

RELATES TO: KRS 205.520, ***205.622, 309.0831,*** Chapter 319, 369.101-369.120, 42 C.F.R. Part 2, 431.17, 45 C.F.R. Parts 160, 164, 20 U.S.C. 1400 et seq., ***21 U.S.C 823(g)(2),*** 29 U.S.C. 701 et seq., 42 U.S.C. 290ee-3, ***1320d-2 - 1320d-8,[42 U.S.C.]*** 1396a(a)(10)(B),***[42 U.S.C.]*** 1396a(a)(23), 12101 et seq.***[,1320d-2 - 1320d-8]***

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6311

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by certain licensed individual behavioral health professionals who are independently enrolled in the Medicaid Program, practitioners working for or under the supervision of the individual behavioral health providers, and individual behavioral health professionals and practitioners under supervision working in behavioral health provider groups or in behavioral health multi-specialty groups.

Section 1. General Coverage Requirements. (1) For the department to reimburse for a service covered under this administrative regulation, the service shall:

(a) Be medically necessary;

(b) Meet the coverage requirements established in Section 3 of this administrative regulation;

(c) Be provided to a recipient by:

1. An individual approved behavioral health practitioner[provider] who:

a. Is enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

b. Except as established in Section 2(1) of this administrative regulation, currently participates in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

c. Is an approved behavioral health practitioner[:

(i) A physician;

(ii) A psychiatrist;

(iii) An advanced practice registered nurse;

(iv) A physician assistant;

(v) A licensed psychologist;

(vi) A licensed psychological practitioner;

(vii) A certified psychologist with autonomous functioning;

(viii) A licensed clinical social worker;

(ix) A licensed professional clinical counselor;

(x) A licensed marriage and family therapist;

(xi) A licensed professional art therapist;

(xii) A licensed clinical alcohol and drug counselor; or

(xiii) A licensed behavior analyst];

2. An[Any of the] individual approved behavioral health practitioner[professionals listed in subparagraph 1.c. of this paragraph] who is working for:

a. A behavioral health provider group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or

b. A behavioral health multi-specialty group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

3. An approved[A] behavioral health practitioner under supervision working for:

a. An individual approved behavioral health practitioner[professional listed in subparagraph 1.c. of this paragraph] who is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

b. A behavioral health provider group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or

c. A behavioral health multi-specialty group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

4.[A certified psychologist working under the supervision of a board-approved licensed psychologist who is:

a.(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

b. Working for a behavioral health provider group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or

c. Working for a behavioral health multi-specialty group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or

5.] An adult peer support specialist, family peer support specialist, youth peer support specialist, or registered alcohol and drug peer support specialist working for:

a.[Any of the individual behavioral health professionals listed in subparagraph 1.c. of this paragraph who is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

b.] A behavioral health provider group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or

b.[c.] A behavioral health multi-specialty group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or

5. A community support associate working for a behavioral health multi-specialty group that is:

a. Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

b. Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

(d) Be billed to the department by the:

1. Individual approved behavioral health practitioner[~~provider~~] who provided the service or under whose supervision the service was rendered in accordance with Section 3 of this administrative regulation;

2. Behavioral health provider group on behalf of which the service was rendered in accordance with Section 3 of this administrative regulation; or

3. Behavioral health multi-specialty group on behalf of which the service was rendered in accordance with Section 3 of this administrative regulation.

(2)(a) Direct[~~Face-to-face~~] contact between a provider or practitioner and a recipient shall be required for each service except for:

1. Collateral outpatient therapy for a child under the age of twenty-one (21) years if the collateral outpatient therapy is in the child's plan of care;

2. A family outpatient therapy service in which the corresponding current procedural terminology code establishes that the recipient is not present;

3. A psychological testing service comprised of interpreting or explaining results of an examination or data to family members or others in which the corresponding current procedural terminology code establishes that the recipient is not present; or

4. A service planning activity in which the corresponding current procedural terminology code establishes that the recipient is not present.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A billable unit of service shall be actual time spent delivering a service in an[~~a face-to-face~~] encounter.

(4) A service shall be:

(a) Stated in a recipient's plan of care; and

(b) Provided in accordance with a recipient's plan of care.

(5)(a) A provider shall establish a plan of care for each recipient receiving services from the provider.

(b) A plan of care shall:

1. Describe the services to be provided to the client, including the frequency of services;

2. Contain measurable goals for the client to achieve, including the expected date of achievement for each goal;

3. Describe the client's functional abilities and limitations, or diagnosis listed in the current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders;

4. Specify each staff member assigned to work with the client;

5. Identify methods of involving the client's family or significant others if indicated;

6. Specify criteria to be met for termination of treatment;

7. Include any referrals necessary for services not provided directly by that provider; and

8. Include the date scheduled for review of the plan.

(c) A separate plan of care shall be established for each recipient receiving services for substance use disorder treatment in accordance with the plan of care requirements established in 908 KAR 1:370, Section 19.

Section 2. Provider Participation. (1) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(2) A provider shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability; and

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the Act.

(3)**(a)** A behavioral health multi-specialty group that is providing services for substance use disorder or co-occurring disorders shall possess an alcohol and other drug entity license pursuant to 908 KAR **1:370[~~3:170~~]** and 908 KAR **1:374.**

**(b) A behavioral health multi-specialty group that does not possess an alcohol and other drug entity license pursuant to 908 KAR 1:370 and 908 KAR 1:374 may provide services for co-occurring mental health and substance use disorders, if the:**

**1. Substance use disorder diagnosis is secondary to a primary mental health diagnosis; and**

**2. Services are provided by an independently licensed practitioner who could independently practice and provide treatment for a co-occurring disorder. A qualifying practitioner shall include:**

**a. A physician;**

**b. A psychiatrist;**

**c. An advanced practice registered nurse;**

**d. A physician assistant;**

**e. A licensed psychologist;**

**f. A licensed psychological practitioner;**

**g. A certified psychologist with autonomous functioning;**

**h. A licensed clinical social worker;**

**i. A licensed professional clinical counselor; or**

**j. A licensed marriage and family therapist.[~~3:174.~~**

**~~(4)(a) A physician providing behavioral health services in a behavioral health multi-specialty group shall possess a psychiatric or addictionology specialty.~~**

**~~(b) An advanced practice registered nurse providing services in a behavioral health multi-specialty group shall possess a psychiatric or addictionology specialty.~~**

**~~(c) A physician assistant providing behavioral health services in a behavioral health multi-specialty group shall have a contractual relationship with a supervising physician with psychiatric or addictionology specialty.~~]**

Section 3. Covered Services. (1) Except as specified in the requirements stated for a given service, the services covered may be provided for a:

(a) Mental health disorder;

(b) Substance use disorder; or

(c) Co-occurring mental health and substance use disorders.

(2)[~~The following~~] Services shall be covered under this administrative regulation in accordance with the requirements established in this section[~~:~~

~~(a) A screening provided by:~~

~~1. A licensed psychologist;~~

~~2. A licensed professional clinical counselor;~~

~~3. A licensed clinical social worker;~~

~~4. A licensed marriage and family therapist;~~

~~5. A physician;~~

~~6. A psychiatrist;~~

~~7. An advanced practice registered nurse;~~

~~8. A physician assistant;~~

~~9. A licensed psychological practitioner;~~

~~10. A certified psychologist with autonomous functioning;~~

~~11. A licensed clinical and alcohol drug counselor;~~

~~12. A licensed professional art therapist; or~~

~~13. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst;~~

~~(b) An assessment provided by:~~

~~1. A licensed psychologist;~~

~~2. A licensed professional clinical counselor;~~

~~3. A licensed clinical social worker;~~

~~4. A licensed marriage and family therapist;~~

~~5. A physician;~~

~~6. A psychiatrist;~~

~~7. An advanced practice registered nurse;~~

~~8. A physician assistant;~~

~~9. A licensed psychological practitioner;~~

~~10. A certified psychologist with autonomous functioning;~~

~~11. A licensed behavior analyst;~~

~~12. A licensed clinical alcohol and drug counselor;~~

~~13. A licensed professional art therapist; or~~

~~14. A behavioral health practitioner under supervision;~~

~~(c) Psychological testing provided by:~~

~~1. A licensed psychologist;~~

~~2. A licensed psychological practitioner;~~

~~3. A licensed psychological associate;~~

~~4. A certified psychologist with autonomous functioning; or~~

~~5. A certified psychologist;~~

~~(d) Service planning provided by:~~

~~1. A licensed psychologist;~~
~~2. A licensed professional clinical counselor;~~
~~3. A licensed clinical social worker;~~
~~4. A licensed marriage and family therapist;~~
~~5. A physician;~~
~~6. A psychiatrist;~~
~~7. An advanced practice registered nurse;~~
~~8. A physician assistant;~~
~~9. A licensed psychological practitioner;~~
~~10. A certified psychologist with autonomous functioning;~~
~~11. A licensed professional art therapist;~~
~~12. A licensed behavior analyst; or~~
~~13. A behavioral health practitioner under supervision except for a:~~
~~a. Certified alcohol and drug counselor; or~~
~~b. Licensed clinical alcohol and drug counselor associate;~~
~~(e) Individual outpatient therapy, group outpatient therapy, collateral outpatient therapy, or crisis intervention services provided by:~~
~~1. A licensed psychologist;~~
~~2. A licensed professional clinical counselor;~~
~~3. A licensed clinical social worker;~~
~~4. A licensed marriage and family therapist;~~
~~5. A physician;~~
~~6. A psychiatrist;~~
~~7. An advanced practice registered nurse;~~
~~8. A physician assistant;~~
~~9. A licensed psychological practitioner;~~
~~10. A certified psychologist with autonomous functioning;~~
~~11. A licensed professional art therapist;~~
~~12. A licensed behavior analyst;~~
~~13. A licensed clinical alcohol and drug counselor; or~~
~~14. A behavioral health practitioner under supervision;~~
~~(f) Family outpatient therapy provided by:~~
~~1. A licensed psychologist;~~
~~2. A licensed professional clinical counselor;~~
~~3. A licensed clinical social worker;~~
~~4. A licensed marriage and family therapist;~~
~~5. A physician;~~
~~6. A psychiatrist;~~
~~7. An advanced practice registered nurse;~~
~~8. A physician assistant;~~
~~9. A licensed psychological practitioner;~~
~~10. A certified psychologist with autonomous functioning;~~
~~11. A licensed professional art therapist;~~
~~12. A licensed clinical alcohol and drug counselor; or~~
~~13. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst;~~
~~(g) A screening, brief intervention, and referral to treatment for a substance use disorder or SBIRT provided by:~~
~~1. A licensed psychologist;~~
~~2. A licensed professional clinical counselor;~~
~~3. A licensed clinical social worker;~~
~~4. A licensed marriage and family therapist;~~
~~5. A physician;~~
~~6. A psychiatrist;~~
~~7. An advanced practice registered nurse;~~
~~8. A physician assistant;~~
~~9. A licensed psychological practitioner;~~
~~10. A certified psychologist with autonomous functioning;~~
~~11. A licensed professional art therapist;~~
~~12. A licensed clinical alcohol and drug counselor; or~~
~~13. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst;~~
~~(h) Day treatment provided by:~~
~~1. A licensed psychologist;~~
~~2. A licensed professional clinical counselor;~~
~~3. A licensed clinical social worker;~~
~~4. A licensed marriage and family therapist;~~
~~5. A physician;~~
~~6. A psychiatrist;~~
~~7. An advanced practice registered nurse;~~
~~8. A physician assistant;~~
~~9. A licensed psychological practitioner;~~
~~10. A certified psychologist with autonomous functioning;~~
~~11. A licensed professional art therapist;~~
~~12. A licensed behavior analyst;~~
~~13. A behavioral health practitioner under supervision;~~
~~14. An adult peer support specialist, family peer support specialist, or youth peer support specialist working under the supervision of an approved behavioral health services provider;~~
~~15. A registered alcohol and drug peer support specialist working under the supervision of an approved behavioral health services provider; or~~
~~16. A licensed clinical alcohol and drug counselor;~~
~~(i) Comprehensive community support services provided by:~~
~~1. A licensed psychologist;~~
~~2. A licensed professional clinical counselor;~~
~~3. A licensed clinical social worker;~~
~~4. A licensed marriage and family therapist;~~
~~5. A physician;~~
~~6. A psychiatrist;~~
~~7. An advanced practice registered nurse;~~
~~8. A physician assistant;~~
~~9. A licensed psychological practitioner;~~
~~10. A certified psychologist with autonomous functioning;~~
~~11. A licensed professional art therapist;~~
~~12. A licensed behavior analyst; or~~
~~13. A behavioral health practitioner under supervision except for a:~~
~~a. Certified alcohol and drug counselor; or~~
~~b. Licensed clinical alcohol and drug counselor associate;~~
~~(j) Peer support, except as established in subsection (3)(a) of this section, provided by:~~
~~1. An adult peer support specialist working under the supervision of an approved behavioral health service provider;~~
~~2. A youth peer support specialist working under the supervision of an approved behavioral health service provider;~~
~~3. A family peer support specialist working under the supervision of an approved behavioral health services provider; or~~
~~4. A registered alcohol and drug peer support specialist working under the supervision of an approved behavioral health services provider;~~
~~(k) Intensive outpatient program services, except as established in subsection (3)(b) of this section, provided by:~~
~~1. A licensed psychologist;~~
~~2. A licensed professional clinical counselor;~~
~~3. A licensed clinical social worker;~~
~~4. A licensed marriage and family therapist;~~
~~5. A physician;~~
~~6. A psychiatrist;~~
~~7. An advanced practice registered nurse;~~
~~8. A physician assistant;~~
~~9. A licensed psychological practitioner;~~
~~10. A behavioral health practitioner under supervision, except for a licensed assistant behavioral analyst;~~
~~11. A licensed professional art therapist; or~~
~~12. A licensed clinical alcohol and drug counselor; or~~
~~(l) Therapeutic rehabilitation program services provided by:~~
~~1. A licensed psychologist;~~
~~2. A licensed professional clinical counselor;~~
~~3. A licensed clinical social worker;~~
~~4. A licensed marriage and family therapist;~~
~~5. A physician;~~
~~6. A psychiatrist;~~
~~7. An advanced practice registered nurse;~~
~~8. A physician assistant;~~
~~9. A licensed psychological practitioner;~~
~~10. A certified psychologist with autonomous functioning;~~
~~11. A licensed professional art therapist;~~
~~12. A behavioral health practitioner under supervision except for a:~~
~~a. Certified alcohol and drug counselor;~~
~~b. Licensed clinical alcohol and drug counselor associate; or~~
~~c. Licensed assistant behavior analyst; or~~
~~13. An adult peer support specialist, family peer support specialist, or youth peer support specialist working under the supervision of an approved behavioral health services provider.~~

~~(3)(a) Peer support shall only be covered if provided by a behavioral health:~~

~~1. Provider group; or~~

~~2. Multi-specialty group.~~

~~(b) Intensive outpatient program services shall only be covered if provided by a behavioral health:~~

~~1. Provider group; or~~

~~2. Multi-specialty group~~].

(3)[~~(4)~~](a) A screening shall:

1. Determine the likelihood that an individual has a mental health disorder, substance use disorder, or co-occurring disorders;

2. Not establish the presence or specific type of disorder;[~~and~~]

3. Establish the need for an in-depth assessment;

4. Be provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; ***and***

5. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(b) An assessment shall:

1. Include gathering information and engaging in a process with the individual that enables the provider to:

a. Establish the presence or absence of a mental health disorder, substance use disorder, or co-occurring disorders;

b. Determine the individual's readiness for change;

c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and

d. Engage the individual in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the individual to develop a treatment and service plan;[~~and~~]

4. Not include psychological or psychiatric evaluations or assessments;

5. Be provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170;

6. If being made for the treatment of a substance use disorder, utilize a multidimensional assessment tool that complies with the most current edition of the ASAM Criteria to determine the most appropriate level of care; and

7. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision**[~~, except for a certified alcohol and drug counselor~~]**.

(c) Psychological testing shall:

1. Include:

a. A psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities; and

b. Interpretation and a written report of testing results; [~~and~~]

2. Be performed by an individual who has met the requirements of KRS Chapter 319 related to the necessary credentials to perform psychological testing;

3. Be provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and

4. Be provided by:

a. A licensed psychologist;

b. A licensed psychological practitioner;

c. A licensed psychological associate **under supervision**;

d. A certified psychologist with autonomous functioning; or

e. A certified psychologist **under supervision**.

(d) Crisis intervention:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:

a. The recipient; or

b. Another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals;

3. Shall be provided:

a.**[~~On-site at the provider's office;~~**

**~~b.~~]** As an immediate relief to the presenting problem or threat; and

**b.[~~c.~~]** In a**[~~face-to-face,~~]** one-on-one encounter between the provider and the recipient**, which is delivered either face-to-face or[~~including~~]** via telehealth as appropriate pursuant to 907 KAR 3:170;

4. May include:

a. Further service prevention planning including:

(i) Lethal means reduction for suicide risk; or

(ii) Substance use disorder relapse prevention; or

b. Verbal de-escalation, risk assessment, or cognitive therapy; [~~and~~]

5. Shall be followed by a referral to noncrisis services if applicable; and

6. Shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(e)1. Service planning shall:

a. Involve assisting a recipient in creating an individualized plan for services and developing measurable goals and objectives needed for maximum reduction of a mental health disorder, substance use disorder, or co-occurring disorders;

b. Involve restoring a recipient's functional level to the recipient's best possible functional level; and

c. Be performed using a person-centered planning process.

2. A service plan:

a. Shall be directed and signed by the recipient;

b. Shall include practitioners of the recipient's choosing; and

c. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan.

3. Service planning shall be provided face-to-face.

4. Service planning shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision**[~~, except for a certified alcohol and drug counselor~~]**.

(f) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and well-being of the recipient; and

b. Restoration of a recipient to their best possible functional level[~~Recipient's recovery~~] from a substance use disorder, mental health disorder, or co-occurring**[~~mental health and substance use~~]** disorders;

2. Consist of:

a. A**[~~face-to-face,~~]** one-on-one encounter between the provider and the recipient**, which is delivered either face-to-face or[~~including~~]** via telehealth as appropriate pursuant to 907 KAR 3:170; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning; [~~and~~]

4. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary; and

5. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision**[~~, except for a certified alcohol and drug counselor~~]**.

(g)1. Family outpatient therapy shall consist of a face-to-face or appropriate telehealth, pursuant to 907 KAR 3:170, behavioral health therapeutic intervention provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple

members from one (1) family) who participate in the session.

3. Family outpatient therapy shall:

a. Be provided to promote the:

(i) Health and wellbeing of the recipient; and

(ii) Restoration of a recipient to their best possible functional level[~~Recipient's recovery~~] from a substance use disorder, mental health disorder, or co-occurring related disorders; ***and***[~~and~~]

b. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per individual unless additional time is medically necessary.

4. Family outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision**[~~, except for a certified alcohol and drug counselor~~]**.

(h)1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;

b. Be provided to promote the:

(i) Health and well-being of the recipient; and

(ii) Restoration of a recipient to their best possible functional level[~~Recipient's recovery~~] from a substance use disorder, mental health disorder, or co-occurring**[~~mental health and substance use~~]** disorders;

c. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

d. Be provided to a recipient in a group setting:

(i) Of nonrelated individuals except for multi-family group therapy; and

(ii) Not to exceed twelve (12) individuals in size;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;

f. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

g. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

h. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

2. The group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of group outpatient therapy shall be related to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

5. Group outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision**[~~, except for a certified alcohol and drug counselor~~]**.

(i)1. Collateral outpatient therapy shall:

a. Consist of a face-to-face or appropriate telehealth, pursuant to 907 KAR 3:170, behavioral health consultation:

(i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's plan of care; and

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age.

2. Consent to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

3. Collateral outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision**[~~, except for a certified alcohol and drug counselor~~]**.

(j) Screening, brief intervention, and referral to treatment for a substance use disorder shall:

1. Be an evidence-based early intervention approach for an individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; [~~and~~]

2. Consist of:

a. Using a standardized screening tool to assess an individual for risky substance use behavior;

b. Engaging a recipient who demonstrates risky substance use behavior in a short conversation and providing feedback and advice to the recipient; and

c. Referring a recipient to additional mental health disorder, substance use disorder, or co-occurring disorders services if the recipient is determined to need other additional services to address the recipient's substance use;

3. Be provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and

4. Be provided by:

a. An approved behavioral health practitioner, except for a licensed behavior analyst; or

b. An approved behavioral health practitioner under supervision, except for a licensed assistant behavior analyst.

(k)1. Day treatment shall be a nonresidential, intensive treatment program designed for a child under the age of twenty-one (21) years who has:

a. A mental health disorder, substance use disorder, or co-occurring[~~mental health and substance use~~] disorders; and

b. A high risk of out-of-home placement due to a behavioral health issue.

2. Day treatment shall:

a. Consist of an organized, behavioral health program of treatment and rehabilitative services;

b. Include:

(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

(ii) Behavior management and social skills training;

(iii) Independent living skills that correlate to the age and development stage of the recipient; or

(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

c. Be provided:

(i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

(ii) On school days and during scheduled breaks;

(iii) In coordination with the recipient's individualized education program[~~individual educational plan~~] if the recipient has an individualized education program[~~individual educational plan~~];

(iv)**[~~Under the supervision of an approved behavioral health practitioner~~]**[~~services provider~~]**[~~;~~]**[~~and~~] **[~~(v)~~]** With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider; and

**(v)[~~(vi)~~]** Face-to-face.

3. To provide day treatment services, a provider shall have:

a. The capacity to employ staff authorized to provide day treatment services in accordance with this section and to coordinate the provision of services among team members; and

b. Knowledge of substance use disorders, mental health disorders, and co-occurring disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education program[~~plan~~].

5. Day treatment shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision**[~~, except for a certified alcohol and drug counselor~~]**.

6. Day treatment support services conducted by a behavioral health multi-specialty group or a behavioral health provider group by an individual working under the supervision of an approved behavioral health practitioner may be provided by:

a. A registered alcohol and drug peer support specialist;

b. An adult peer support specialist;

c. A family peer support specialist; or

d. A youth peer support specialist.

(l)1. Comprehensive community support services shall:

a. Be activities necessary to allow an individual to live with

maximum independence in the community;

b. Be intended to ensure successful community living through the utilization of skills training as identified in the recipient's plan of care; and

c. Consist of using a variety of psychiatric or behavioral rehabilitation techniques to:

(i) Improve emotional regulation skills;

(ii) Improve crisis coping skills;

(iii) Develop and enhance interpersonal skills;

(iv) Improve daily living skills; and

(v) Improve self-monitoring of symptoms and side effects.

2. To provide comprehensive community support services, a provider shall:

a. Have the capacity to employ staff authorized pursuant to 908 KAR 2:250 to provide comprehensive community support services [~~in accordance with subsection (2)(i) of this section~~] and to coordinate the provision of services among team members; and

b. Meet the requirements for comprehensive community support services established in 908 KAR 2:250.

3. Comprehensive community support services shall be provided face-to-face.

4. Comprehensive community support services shall be provided by:

a. An approved behavioral health practitioner, except for a licensed clinical alcohol and drug counselor; or

b. An approved behavioral health practitioner under supervision, except for a:

(i) Certified alcohol and drug counselor; or

(ii) Licensed clinical alcohol and drug counselor associate.

5. Support services for comprehensive community support services conducted by a behavioral health multi-specialty group or a behavioral health provider group by an individual working under the supervision of an approved behavioral health practitioner may be provided by***[;***

***~~a.~~]*** a community support associate***[; or***

***~~b. A registered behavior~~]*****[behavioral]*****[~~technician under the supervision of a licensed behavioral analyst~~]***.

(m)1. Peer support services shall:

a. Be emotional support that is provided by:

(i) An individual who has been trained and certified in accordance with 908 KAR 2:220 and who is experiencing or has experienced a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders to a recipient by sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change;

(ii) A parent or other family member who has been trained and certified in accordance with 908 KAR 2:230 of a child having or who has had a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders to a parent or family member of a child sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change;

(iii) An individual[~~A family member~~] who has been trained and certified in accordance with 908 KAR 2:240 and identified as having experienced as a child or youth an emotional, social, or behavioral disorder that is defined in the current version of the Diagnostic and Statistical Manual for Mental Disorders[~~2:230 of a child having or who has had a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders to a parent or family member of a child sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change~~]; or

(iv) A registered alcohol and drug peer support specialist who is experiencing or has experienced a substance use disorder to a recipient by sharing a similar substance use disorder in order to bring about a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled nonclinical therapeutic activities with an individual recipient or a group of recipients;

d. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

e. Except for the engagement into substance use disorder treatment conducted through emergency department bridge clinics, be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

f. Be identified in each recipient's plan of care;[~~and~~]

g. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's plan of care; and

h. Be provided face-to-face.

2. To provide peer support services, a provider shall:

a. Have demonstrated:

(i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ:

(i) Adult peer support specialists, family peer support specialists, or youth peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240; or

(ii) Registered alcohol and drug peer support specialists **who are qualified to provide peer support services in accordance with KRS 309.0831**; [~~and~~]

c. Use an approved behavioral health practitioner[~~services provider~~] to supervise adult peer support specialists, family peer support specialists, or youth peer support specialists; and

d. Require that:

(i) Individuals providing peer support services to recipients provide no more than **thirty (30) hours[~~one hundred and twenty (120) units~~]** per week of direct recipient contact; and

(ii) Peer support services provided to recipients in a group setting not exceed eight (8) individuals within any group at one time.

3. Peer support shall only be covered if provided by a behavioral health:

a. Provider group; or

b. Multi-specialty group.

(n)1. Intensive outpatient program services shall:

a. Be an alternative to or transition from a higher level of care[~~inpatient hospitalization or partial hospitalization~~] for a mental health or substance use disorder, or co-occurring disorders;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. For an intensive outpatient program providing services for SUD treatment, meet the service criteria including components for support systems, staffing, and therapies outlined in the most current edition of The ASAM Criteria for intensive outpatient level of care services;

d. Be provided face-to-face;

e. Be provided at least three (3) hours per day at least three (3) days per week for adults;

f. Be provided at least six (6) hours per week for adolescents; and

g.[~~d.~~] Include:

(i) Individual outpatient therapy;

(ii) Group outpatient therapy;

(iii) Family outpatient therapy unless contraindicated;

(iv) Crisis intervention; or

(v) Psycho-education, related to identified goals in the recipient's treatment plan.

2. During psycho-education**,** the recipient or recipient's family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a provider shall:

a. Be employed by a behavioral health multi-specialty group or behavioral health provider group; and

b. Have:

(i) Access to a board-certified or board-eligible psychiatrist for consultation;

(ii) Access to a psychiatrist, other physician, or advanced practice registered nurse for medication management;

(iii) The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;

(iv) The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members;

(v) The capacity to provide the full range of intensive outpatient program services as stated in this paragraph;

(vi) Demonstrated experience in serving individuals with behavioral health disorders;

(vii) The administrative capacity to ensure quality of services;

(viii) A financial management system that provides documentation of services and costs; and

(ix) The capacity to document and maintain individual case records.

5. Intensive outpatient program services shall be provided in a setting with a minimum recipient-to-staff ratio of ten (10) to one (1).

6. Intensive outpatient program services shall be provided by:

a. An approved behavioral health practitioner, except for a licensed behavior analyst; or

b. An approved behavioral health practitioner under supervision, except for a licensed assistant behavior analyst.

7. Intensive outpatient program services shall only be covered if provided by a behavioral health:

a. Provider group; or

b. Multi-specialty group.

(o)1. Therapeutic rehabilitation program services shall be:

a. Face-to-face, on-site, psychiatric rehabilitation and supports for an individual with a severe and persistent mental illness or an[~~A rehabilitative service for an:~~

~~(i) Adult with a severe mental illness; or~~

~~(ii)~~] individual under the age of twenty-one (21) years who has a severe emotional disability; and

b. Designed to maximize the reduction of a mental health disorder and the restoration of the individual's functional level to the individual's best possible functional level.

2. A recipient in a therapeutic rehabilitation program shall establish the recipient's own rehabilitation goals within the plan of care.

3. A therapeutic rehabilitation program shall:

a. Be delivered using a variety of psychiatric rehabilitation techniques;

b. Focus on:

(i) Improving daily living skills;

(ii) Self-monitoring of symptoms and side effects;

(iii) Emotional regulation skills;

(iv) Crisis coping skills; and

(v) Interpersonal skills; and

c. Be delivered individually or in a group.

4. Therapeutic rehabilitation programs shall include:

a. An individualized plan of care identifying measurable goals and objectives, including a discharge and relapse prevention plan; and

b. Coordination of services the individual may be receiving and referral to other necessary support services as needed.

5. Program staffing for a therapeutic rehabilitation program shall include:

a. Licensed clinical supervision, consultation, and support to direct care staff; and

b. Direct care staff to provide scheduled therapeutic activities, training, and support.

6. Therapeutic rehabilitation services shall be provided by:

a. An approved behavioral health practitioner, except for a[**:**

~~**(i) Licensed behavior analyst; or**~~

~~**(ii)**~~] licensed clinical alcohol and drug counselor; or

b. An approved behavioral health practitioner under supervision, except for a:

(i)[~~**Licensed assistant behavior analyst;**~~

~~**(ii)**~~] Certified alcohol and drug counselor; or

**(ii)**[~~**(iii)**~~] Licensed clinical alcohol and drug counselor associate.

7. If not provided by an allowed practitioner pursuant to ***subparagraph[~~clause~~]*** 6. of this ***paragraph[~~subparagraph~~]***, support services for therapeutic rehabilitation services shall be conducted by a provider:

a. Working under the supervision of an approved behavioral health practitioner; and

b. Who is:

(i) An adult peer support specialist;

(ii) A family peer support specialist; or

(iii) A youth peer support specialist.

(p)1. Withdrawal management services shall:

a. Be provided face-to-face for recipients with a substance use disorder or co-occurring disorder and incorporated into a recipient's care along the continuum of care as needed;

b. Meet service criteria in accordance with the most current version of the ASAM Criteria for withdrawal management levels in an outpatient setting;

c. Be provided by:

(i) A behavioral health multi-specialty group;

(ii) A behavioral health provider group; or

(iii) An approved behavioral health practitioner or behavioral health practitioner under supervision with oversight by a physician, advanced practice registered nurse, or physician assistant; and

d. If provided in an outpatient setting, comply with 908 KAR 1:374, Section 2.

2.***[~~a.~~]*** A recipient who is receiving withdrawal management services shall meet the most current edition of diagnostic criteria for substance withdrawal management as established by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders.

3. Withdrawal management services in an outpatient setting shall be provided by:

a. A physician;

b. A psychiatrist;

c. A physician assistant;

d. An advanced practice registered nurse; or

e. An approved behavioral health practitioner or behavioral health practitioner under supervision with oversight by a physician, advanced practice registered nurse, or physician assistant.

(q)1. Medication assisted treatment services shall be provided by an authorized prescribing provider who:

a. Is:

(i) A physician;

(ii) An advanced practice registered nurse; or

(iii) A psychiatrist;

b. Meets standards established pursuant to 201 KAR 9:270 or 201 KAR 20:065;

c. Maintains a current waiver under 21 U.S.C. 823(g)(2) to prescribe buprenorphine products; and

d. Has experience and knowledge in addiction medicine.

2. Medication assisted treatment supporting behavioral health services shall:

a. Be co-located within the same practicing site as the practitioner who maintains a current waiver under 21 U.S.C. 823(g)(2) to prescribe buprenorphine products or via telehealth as appropriate pursuant to 907 KAR 3:170; or

b. Have agreements in place for linkage to appropriate behavioral health treatment providers who specialize in substance use disorders and are knowledgeable in biopsychosocial dimensions of alcohol and other substance use disorders, such as:

(i) A licensed behavioral health services organization;

(ii) A multi-specialty group;

(iii) A provider group; or

(iv) An individual behavioral health practitioner.

3. Medication assisted treatment may be provided in a provider group or multi-specialty group operating in accordance with 908

KAR 1:374, Section 7.

4. A medication assisted treatment program shall:

a. Assess the need for treatment including:

(i) A full patient history to determine the severity of the patient's substance use disorder; and

(ii) Identifying and addressing any underlying or co-occurring diseases or conditions, as necessary;

b. Educate the patient about how the medication works, including:

(i) The associated risks and benefits; and

(ii) Overdose prevention;

c. Evaluate the need for medically managed withdrawal from substances;

d. Refer patients for higher levels of care if necessary; and

e. Obtain informed consent prior to integrating pharmacologic or nonpharmacologic therapies.

***(r)1. Applied behavior analysis services shall produce socially significant improvement in human behavior via the:***

***a. Design, implementation, and evaluation of environmental modifications;***

***b. Use of behavioral stimuli and consequences; or***

***c. Use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.***

***2. Applied behavior analysis shall be based on scientific research and the direct observation and measurement of behavior and environment, which utilize contextual factors, establishing operations, antecedent stimuli, positive reinforcement, and other consequences to assist recipients in:***

***a. Developing new behaviors;***

***b. Increasing or decreasing existing behaviors; and***

***c. Eliciting behaviors under specific environmental conditions.***

***3. Applied behavior analysis services may include principles, methods, and procedures of the experimental analysis of behavior and applied behavior analysis, including applications of those principles, methods, and procedures to:***

***a. Design, implement, evaluate, and modify treatment programs to change the behavior of individuals;***

***b. Design, implement, evaluate, and modify treatment programs to change the behavior of individuals that interact with a recipient;***

***c. Design, implement, evaluate, and modify treatment programs to change the behavior of a group or groups that interact with a recipient; or***

***d. Consult with individuals and organizations.***

***4.a. Applied behavior analysis services shall be provided by:***

***(i) A licensed behavior analyst;***

***(ii) A licensed assistant behavior analyst;***

***(iii) An approved behavioral health practitioner with documented training in applied behavior analysis; or***

***(iv) An approved behavioral health practitioner under supervision with documented training in applied behavior analysis.***

***b. A registered behavior technician under the supervision of an appropriate practitioner pursuant to clause a. of this subparagraph may provide support services under this paragraph.***

(4)(a)***[~~Limited~~]*** Laboratory services shall be reimbursable in accordance with 907 KAR 1:028 when provided by a behavioral health provider group or behavioral health multi-specialty group if:

1. The behavioral health provider group or behavioral health multi-specialty group has the appropriate CLIA certificate to perform laboratory testing pursuant to 907 KAR 1:028; and

2. The services are prescribed by a physician, advanced practice registered nurse, or physician assistant who has a contractual relationship with the behavioral health provider group or behavioral health multi-specialty group.

(b)***[~~Partial limited~~]*** Laboratory services may be administered, as appropriate, by:

1. An approved behavioral health practitioner; or

2. An approved behavioral health practitioner under supervision.[~~(5) The extent and type of a screening shall depend upon the problem of the individual seeking or being referred for services.~~

~~(6) A diagnosis or clinic impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.~~

~~(7) The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider.~~]

Section 4. Additional Limits and Noncovered Services or Activities. (1) The following services or activities shall not be covered under this administrative regulation:

(a) A service provided to:

1. A resident of:

a. A nursing facility; or

b. An intermediate care facility for individuals with an intellectual disability;

2. An inmate of a federal, local, or state:

a. Jail;

b. Detention center; or

c. Prison; or

3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;

(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the provider;

(c) A consultation or educational service provided to a recipient or to others;

(d) Collateral therapy for an individual aged twenty-one (21) years or older;

(e) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of **["]**face-to-face**["]**, unless the electronic contact is appropriate as a comparable telehealth service pursuant to 907 KAR 3:170;

(f) Travel time;

(g) A field trip;

(h) A recreational activity;

(i) A social activity; or

(j) A physical exercise activity group.

(2)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except regarding collateral outpatient therapy as specified in Section 3(3)[~~(4)~~](i) of this administrative regulation.

(b) A third party contract shall not be covered under this administrative regulation.

(3)(a) Except as established in paragraph (b) of this subsection, unless a diagnosis is made and documented in the recipient's medical record within three (3) visits, the service shall not be covered.

(b) The requirement established in paragraph (a) of this subsection shall not apply to:

1. Crisis intervention;

2. A screening; [~~or~~]

3. An assessment; or

4. Peer support services for the engagement into substance use disorder treatment within an emergency department bridge clinic.

(4) The department shall not reimburse for both a screening and an SBIRT (screening, brief intervention, and referral to treatment for a substance use disorder) provided to a recipient on the same date of service.

(5) A billing supervisor arrangement between a billing supervisor and a behavioral health practitioner under supervision shall not:

(a) Violate the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision; or

(b) Substitute for the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under

supervision.

Section 5. Duplication of Service Prohibited. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an individual behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a behavioral health services organization.

Section 6. Records Maintenance, Documentation, Protection, and Security. (1) An individual provider, a behavioral health provider group, or a behavioral health multi-specialty group shall maintain a current health record for each recipient.

(2)[~~(a)~~] A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.[~~(b) The individual who provided the service shall date and sign the health record within forty-eight (48) hours of the date that the individual provided the service.~~]

(3) A health record shall:

(a) Include:

1. An identification and intake record including:

a. Name;

b. Social Security number;

c. Date of intake;

d. Home (legal) address;

e. Health insurance information;

f. If applicable, the referral source's name and address;

g. Primary care physician's name and address;

h. The reason the individual is seeking help including the presenting problem and diagnosis;

i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The physical health provider's name; and

j. The name of the informant and any other information deemed necessary by the provider to comply with the requirements of:

(i) This administrative regulation;

(ii) The provider's licensure board, if applicable;

(iii) State law; or

(iv) Federal law;

2. Documentation of the:

a. Screening;

b. Assessment;

c. Disposition if a disposition was performed; and

d. Six (6) month review of a recipient's plan of care each time a six (6) month review occurs, and as needed;

3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services; and

(b) Be:

1. Maintained in an organized central file;

2. Furnished upon request to the:

a. Cabinet for Health and Family Services; or

b. For an enrollee, managed care organization in which the recipient is enrolled or has been enrolled in the past;

3. Made available for inspection and copying by:

a. Cabinet for Health and Family Services' personnel; or

b. Personnel of the managed care organization in which the recipient is enrolled if applicable;

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient received services beyond a screening.

(4) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(5)(a) A behavioral health practitioner's service notes regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit;[~~and~~]

2. Indicate if the service was provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and

3. Describe the:

a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

b. Behavioral health practitioner's intervention;

c. Changes in the plan of care if changes are made; and

d. Need for continued treatment if deemed necessary.

(b)1. Any edit to notes shall:

a. Clearly display the changes; and

b. Be initialed and dated by the person who edited the notes.

2. Notes shall not be erased or illegibly marked out.

(c)1. Notes recorded by a practitioner working under supervision shall be co-signed and dated by the supervising professional within thirty (30) days of each service visit.

2. If services are provided by a[~~behavioral health~~] practitioner working under supervision, there shall be a monthly supervisory note recorded by the supervising[~~supervision~~] professional reflecting consultations with the practitioner working under supervision concerning the:

a. Case; and

b. Supervising professional's evaluation of the services being provided to the recipient.

(6) Immediately following a screening of a recipient, the behavioral health practitioner who performed the screening shall perform a disposition related to:

(a) A provisional diagnosis;

(b) A referral for further consultation and disposition, if applicable; or

(c)1. If applicable, termination of services and referral to an outside source for further services; or

2. If applicable, termination of services without a referral to further services.

(7)(a) A recipient's plan of care shall be reviewed at least once every six (6) months, or as needed earlier than six (6) months.

(b) Any change to a recipient's plan of care shall be documented, signed, and dated by the rendering practitioner and by the recipient or recipient's representative.

(8)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;

2. Be dated;

3. Be titled to indicate the service rendered;

4. State a starting and ending time for the service; and

5. Be recorded and signed by the rendering behavioral health practitioner and include the practitioner's professional title (for example, licensed clinical social worker).

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not coverable under this administrative regulation, or other non-reimbursable contacts shall:

1. Be recorded in the notes; and

2. Not be reimbursable.

(9) A termination summary shall:

(a) Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

(b) Contain a summary of the significant findings and events during the course of treatment including the:

1. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's plan of care;

2. Final diagnosis of clinical impression; and

3. Individual's condition upon termination and disposition.

(c) A health record relating to an individual who terminated from receiving services shall be fully completed within ten (10) days following termination.

(10) If an individual's case is reopened within ninety (90) days

of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(11)(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring provider shall, within ten (10) business days of the transfer or referral, transfer the recipient's health record in a manner that complies with the records' use and disclosure requirements as established in or required by:

1.a. The Health Insurance Portability and Accountability Act;

b. 42 U.S.C. 1320d-2 to 1320d-8; and

c. 45 C.F.R. Parts 160 and 164; or

2.a. 42 U.S.C. 290ee-3; and

b. 42 C.F.R. Part 2.

(b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, or an acute care hospital for care or treatment, the transferring provider shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

1.a. The Health Insurance Portability and Accountability Act;

b. 42 U.S.C. 1320d-2 to 1320d-8; and

c. 45 C.F.R. Parts 160 and 164; or

2.a. 42 U.S.C. 290ee-3; and

b. 42 C.F.R Part 2.

(12)(a) If an individual behavioral health practitioner's[~~provider's~~], a behavioral health provider group's, or a behavioral health multi-specialty group's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, or a licensure suspension, the health records of the individual behavioral health practitioner[~~provider~~], behavioral health provider group, or behavioral health multi-specialty group shall:

1. Remain the property of the individual behavioral health practitioner[~~provider~~], behavioral health provider group, or behavioral health multi-specialty group; and

2. Be subject to the retention requirements established in subsection (13) of this section.

(b)1. If an individual behavioral health practitioner[~~provider~~] dies, the health records maintained by the individual behavioral health practitioner[~~provider~~] shall remain the property of the individual behavioral health practitioner[~~provider~~].

2. An individual behavioral health practitioner[~~provider~~] shall have a written plan addressing how to maintain health records following the provider's death in a manner that complies with the retention requirements established in subsection (13) of this section.

(13)(a) Except as established in paragraph (b) or (c) of this subsection, an individual behavioral health practitioner[~~provider~~], a behavioral health provider group, or a behavioral health specialty group shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.

(b) After a recipient's death or discharge from services, an individual behavioral health practitioner[~~provider~~], a behavioral health provider group, or a behavioral health multi-specialty group shall maintain the recipient's record for the longest of the following periods:

1. Five (5) years unless the recipient is a minor; or

2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection[~~section~~], pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(14)(a) An individual behavioral health practitioner[~~provider~~], a behavioral health provider group, or a behavioral health multi-specialty group shall comply with 45 C.F.R. Part[~~Chapter~~] 164.

(b) All information contained in a health record shall:

1. Be treated as confidential;

2. Not be disclosed to an unauthorized individual; and

3. Be disclosed to an authorized representative of:

a. The department;

b. Federal government; or

c. For an enrollee, the managed care organization in which the enrollee is enrolled.

(c)1. Upon request, an individual behavioral health practitioner[~~provider~~], a behavioral health provider group, or a behavioral health multi-specialty group shall provide to an authorized representative of the department, federal government, or managed care organization if applicable, information requested to substantiate:

a. Staff notes detailing a service that was rendered;

b. The professional who rendered a service; and

c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department or the managed care organization, if applicable.

2. Failure to provide information referenced in subparagraph 1. of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 7. Medicaid Program Participation Compliance. (1) An individual behavioral health practitioner[~~provider~~], a behavioral health provider group, or a behavioral health multi-specialty group shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If an individual behavioral health practitioner[~~provider~~], a behavioral health provider group, or a behavioral health multi-specialty group receives any duplicate payment or overpayment from the department, regardless of reason, the individual behavioral health practitioner[~~provider~~], [~~a~~] behavioral health provider group, or behavioral health multi-specialty group shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection[~~section~~] may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the individual behavioral health practitioner[~~provider~~],[~~a~~] behavioral health provider group, or behavioral health multi-specialty group accepts the payment:

1. The payment shall be considered payment in full;

2. A bill for the same service shall not be given to the recipient; and

3. Payment from the recipient for the same service shall not be accepted by the individual behavioral health practitioner[~~provider~~], a behavioral health provider group, or behavioral health multi-specialty group.

(b)1. An individual behavioral health practitioner[~~provider~~], a behavioral health provider group, or a behavioral health multi-specialty group may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

a. Recipient requests the service; and

b. Individual behavioral health practitioner[~~provider~~],[~~a~~] behavioral health provider group, or behavioral health multi-specialty group makes the recipient aware in advance of providing the service that the:

(i) Recipient is liable for the payment; and

(ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1. of this paragraph, the:

a. Individual behavioral health practitioner[~~provider~~],[~~a~~] behavioral health provider group, or behavioral health multi-specialty group shall not bill the department for the service; and

b. Department shall not:

(i) Be liable for any part of the payment associated with the service; and

(ii) Make any payment to the individual behavioral health practitioner[~~provider~~],[~~a~~] behavioral health provider group, or behavioral health multi-specialty group regarding the service.

(4)(a) An individual behavioral health practitioner[~~provider~~], a behavioral health provider group, or a behavioral health multi-specialty group shall attest by the individual behavioral health practitioner's[~~provider's~~] signature or signature of an individual on behalf of a behavioral health provider group or behavioral health multi-specialty group that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;

2. Cabinet for Health and Family Services, Office of Inspector General or its designee;

3. Kentucky Office of Attorney General or its designee;

4. Kentucky Office of the Auditor for Public Accounts or its designee; or

5. United States General Accounting Office or its designee.

(c) If an individual behavioral health practitioner[~~provider~~], a behavioral health provider group, or a behavioral health multi-specialty group receives a request from the department to provide a claim, related information, related documentation, or record for auditing purposes, the individual behavioral health practitioner[~~provider~~],[~~a~~] behavioral health provider group, or behavioral health multi-specialty group shall provide the requested information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by an individual behavioral health practitioner[~~provider~~], a behavioral health provider group, or a behavioral health multi-specialty group shall result in the suspension or termination of the individual behavioral health practitioner[~~provider~~],[~~a~~] behavioral health provider group, or behavioral health multi-specialty group from Medicaid Program participation.

(5)(a) If an individual behavioral health practitioner[~~provider~~], a behavioral health provider group, or a behavioral health multi-specialty group renders a Medicaid-covered service to a recipient, regardless of if the service is billed through the individual behavioral health practitioner's[~~provider's~~], behavioral health provider group's, or behavioral health multi-specialty group's Medicaid provider number or any other entity or individual including a non-Medicaid provider, the recipient shall not be charged or billed for the service.

(b) The department shall terminate from Medicaid Program participation an individual behavioral health practitioner[~~provider~~], a behavioral health provider group, or a behavioral health multi-specialty group that:

1. Charges or bills a recipient for a Medicaid-covered service; or

2. Participates in an arrangement in which an entity or individual bills a recipient for a Medicaid-covered service rendered by the individual behavioral health practitioner[~~provider~~],[~~a~~] behavioral health provider group, or behavioral health multi-specialty group.

Section 8. Third Party Liability. An individual behavioral health practitioner[~~provider~~], a behavioral health provider group, or a behavioral health multi-specialty group shall comply with KRS 205.622.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) An individual behavioral health practitioner[~~provider~~], a behavioral health provider group, or a behavioral health multi-specialty group that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the practitioner's[~~provider's~~] employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the individual behavioral health practitioner's[~~provider's~~], behavioral health provider group's, or behavioral health multi-specialty group's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 10. Auditing Authority. The department shall have the authority to audit any:

(1) Claim;

(2) Medical record; or

(3) Documentation associated with any claim or medical record.

Section 11. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

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

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

Section 12. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October14, 2019

FILED WITH LRC: October 15, 2019 at 8 a.m.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, Cabinet for Health and Family Services, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES**
**Department for Medicaid Services**
**Division of Policy and Operations**
**(As Amended at ARRS, November 12, 2019)**

**907 KAR 15:015. Reimbursement provisions and requirements for behavioral health services provided by individual approved behavioral health practitioners[~~providers~~], behavioral health provider groups, or behavioral health multi-specialty groups.**

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 1396a(a)(23), 1396a(a)(30)(A)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6311

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by[~~certain licensed~~] individual approved behavioral health practitioners[~~professionals~~] who are independently enrolled in the Medicaid Program, practitioners

working for or under the supervision of the individual approved behavioral health practitioners [~~professionals~~], and approved[~~individual~~] behavioral health [~~professionals and~~] practitioners under supervision working in behavioral health provider groups or in behavioral health multi-specialty groups, to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. General Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(1) Covered in accordance with 907 KAR 15:010; and

(2) Billed to the department by an individual approved behavioral health practitioner[~~provider~~], behavioral health provider group, or behavioral health multi-specialty group recognized as a Medicaid Program provider in accordance with 907 KAR 15:010.

Section 2. Reimbursement. (1) One (1) unit of service shall be:

(a) Fifteen (15) minutes in length unless a different unit of service exists for the service in the corresponding:

1. Current procedural terminology code; or

2. Healthcare common procedure coding system code; or

(b) The unit amount identified in the corresponding:

1. Current procedural terminology code if an amount is identified in the current procedural terminology code; or

2. Healthcare common procedure coding system code if an amount is identified in the healthcare common procedure coding system code.

(2) Except as provided by subsection (3) of this section, the rate per unit for a covered service shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or

2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; [~~or~~]

2. A licensed psychologist; or

3. A physician assistant;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;

2. Licensed clinical social worker;

3. Licensed psychological practitioner;

4. Certified psychologist with autonomous functioning;

5. Licensed marriage and family therapist;

6. Licensed professional art therapist;

7. Licensed behavior analyst; or

8. Licensed clinical alcohol and drug counselor;

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate;

2. Licensed professional counselor associate;

3. Licensed psychological associate;

4. Certified social worker;

5.[~~Physician assistant;~~

~~6.~~] Licensed professional art therapist associate;

6.[~~7.~~] Licensed assistant behavior analyst;

7.[~~8.~~] Certified psychologist; or

8.[~~9.~~] Licensed clinical alcohol and drug counselor associate; or

(e) Thirty-seven and five-tenths (37.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a certified alcohol and drug counselor.

(3) Reimbursement[~~for the following services~~] shall be as established on the Kentucky Medicaid Behavioral Health and Substance Abuse Services Outpatient (Non-facility) Fee Schedule and this administrative regulation for those services that are eligible to be provided by each individual approved behavioral health practitioner, behavioral health provider group, or behavioral health multi-specialty group as established pursuant to 907 KAR 15:010[~~:~~

~~(a) Screening, brief intervention, and referral to treatment (SBIRT);~~

~~(b) Service planning;~~

~~(c) Day treatment;~~

~~(d) Comprehensive community support services;~~

~~(e) Peer support services;~~

~~(f) Intensive outpatient program services; or~~

~~(g) Therapeutic rehabilitation program services~~].

(4)(a) The department shall use the current version of the Kentucky-specific Medicare Physician Fee Schedule for reimbursement purposes.

(b) For example, if the Kentucky-specific Medicare Physician Fee Schedule currently published and used by the Centers for Medicare and Medicaid Services for the Medicare Program is:

1. An interim version, the department shall use the interim version until the final version has been published; or

2. The final version, the department shall use the final version.

(5) The department shall not reimburse for a service billed by or on behalf of an entity or individual that is not a billing provider.

Section 3. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

(1) 907 KAR 15:010; and

(2) This administrative regulation.

Section 4. 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 5. Incorporation by Reference. (1) "Kentucky Medicaid Behavioral Health and Substance Abuse Services Outpatient (Non-Facility) Fee Schedule", July 2019[~~June 2016~~], is incorporated by reference.

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

(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at https://chfs.ky.gov/agencies/dms/Pages/***feesrates[regsmaterials]***.aspx[~~http://www.chfs.ky.gov/dms/incorporated.htm~~].907 KAR 15:015

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 3, 2019

FILED WITH LRC: June 28, 2019 at 4 p.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES**
**Department for Medicaid Services**
**Division of Policy and Operations**
**(As Amended at ARRS, November 12, 2019)**

**907 KAR 15:020. Coverage provisions and requirements regarding services provided by behavioral health services organizations for mental health treatment.**

RELATES TO: KRS 205.520, ***369.101 - 369.120,*** 20 U.S.C. 1400 et seq., 29 U.S.C. 701 et seq., 42 U.S.C. 290 ee-3, 1320d-2 ***-[~~to~~]*** 1320d-8, 1396a(a)(10)(B),[~~42 U.S.C.~~] 1396a(a)(23), 42 C.F.R. Part 2, 431.17, 45 C.F.R. Parts 160, 164

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by tier I behavioral health services organizations.

Section 1. General Coverage Requirements. (1) For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(a) Medically necessary; and

(b) Provided:

1. To a recipient; and

2. By a behavioral health services organization that meets the provider participation requirements established in Section 2 of this administrative regulation.

(2)(a) Direct contact between a practitioner and a recipient shall be required for each service except for:

1. Collateral outpatient therapy for a child under the age of twenty-one (21) years if the collateral outpatient therapy is in the child's plan of care;

2. A family outpatient service in which the corresponding current procedural terminology code establishes that the recipient is not present; or

3. A psychological testing service comprised of interpreting or explaining results of an examination or data to family members or other kin if the corresponding current procedural terminology code establishes that the recipient is not present.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A billable unit of service shall be actual time spent delivering a service in an[~~a face-to-face~~] encounter.

(4) A service shall be:

(a) Stated in the recipient's plan of care; and

(b) Provided in accordance with the recipient's plan of care.

(5)(a) A behavioral health services organization shall establish a plan of care for each recipient receiving services from the behavioral health services organization.

(b) A plan of care shall meet the plan of care requirements established in 902 KAR 20:430.

Section 2. Provider Participation. (1) To be eligible to provide services under this administrative regulation, a behavioral health services organization shall:

(a) Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(b)[~~Except as established in subsection (2) of this section,~~] Be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

(c) Have:

1. For each service it provides, the capacity to provide the full range of the service as established in this administrative regulation;

2. Documented[~~Demonstrated~~] experience in serving individuals with behavioral health disorders;

3. The administrative capacity to ensure quality of services;

4. A financial management system that provides documentation of services and costs; and

5. The capacity to document and maintain individual case records **in accordance with Section 6 of this administrative regulation**.

(2)[~~In accordance with 907 KAR 17:015, Section 3(3), a behavioral health services organization which provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.~~

~~(3)~~] A behavioral health services organization shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability;[~~and~~]

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the Act; and

(c) Provide, directly or through written agreement with another behavioral health services provider, access to face-to-face or telehealth, as appropriate pursuant to 907 KAR 3:170, emergency services twenty-four (24) hours per day, seven (7) days per week.

(3) A BHSO I shall:

(a) Not receive reimbursement for services provided for outpatient or residential substance use disorder treatment**, except as permitted pursuant to Section 3 of this administrative regulation if the primary diagnosis is mental health**;

(b) Provide services in accordance with its licensure, 902 KAR 20:430, and Section 3 of this administrative regulation for mental health treatment; and

(c) ***Except as provided by subsection (4) of this section,*** possess accreditation within one (1) year of initial enrollment by one (1) of the following:

1. The Joint Commission;

2. The Commission on Accreditation of Rehabilitation Facilities;

3. The Council on Accreditation; or

4. A nationally recognized accreditation organization.

***(4) The department shall grant a one (1) time extension to a BHSO I that requests a one (1) time extension to complete the accreditation process, if the request is submitted at least ninety (90) days prior to expiration of provider enrollment.***

Section 3. Covered Services. (1) The following providers shall not be eligible to provide services under this administrative regulation for a BHSO I:

(a) A licensed clinical alcohol and drug counselor (LCADC);

(b) A licensed clinical alcohol and drug counselor associate (LCADCA);

(c) A certified alcohol and drug counselor (CADC); or

(d) A substance use disorder peer support specialist.

(2)[~~**A physician providing behavioral health services in a BHSO I shall possess a psychiatric specialty.**~~

~~**(3) An advanced practice registered nurse providing behavioral health services in a BHSO I shall possess a psychiatric specialty.**~~

~~**(4) A physician assistant providing behavioral health services in a BHSO I shall have a contractual relationship with a supervising physician who has a psychiatric specialty.**~~

~~**(5)**~~] Except as specified in the requirements stated for a given service, the services covered may be provided for a**:**

**(a)**[~~:~~

~~(a)~~] Mental health disorder**; or**

**(b) Co-occurring disorders, if the:**

**1. Substance use disorder diagnosis is secondary to a primary mental health diagnosis; and**

**2. Services are provided by an independently licensed practitioner who could independently practice and provide treatment for a co-occurring disorder. The following qualifying practitioners may provide co-occurring disorder treatment within a BHSO I:**

**a. A physician;**

**b. A psychiatrist;**

**c. An advanced practice registered nurse;**

**d. A physician assistant;**

**e. A licensed psychologist;**

**f. A licensed psychological practitioner;**

**g. A certified psychologist with autonomous functioning;**

**h. A licensed clinical social worker;**

**i. A licensed professional clinical counselor; or**

**j. A licensed marriage and family therapist**[~~;~~

~~(b) Substance use disorder; or~~

~~(c) Co-occurring mental health and substance use disorders~~].

**(3)[~~(6)~~]**[~~(2)~~] The[~~following~~] services established in this subsection shall be covered under this administrative regulation in accordance with the[~~corresponding following~~] requirements established in this section.[~~:~~

~~(a) A screening, crisis intervention, or intensive outpatient program service provided by:~~

~~1. A licensed psychologist;~~

~~2. A licensed psychological practitioner;~~

~~3. A licensed clinical social worker;~~

~~4. A licensed professional clinical counselor;~~

~~5. A licensed professional art therapist;~~

~~6. A licensed marriage and family therapist;~~
~~7. A physician;~~
~~8. A psychiatrist;~~
~~9. An advanced practice registered nurse; or~~
~~10. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst;~~
~~(b) An assessment provided by:~~
~~1. A licensed psychologist;~~
~~2. A licensed psychological practitioner;~~
~~3. A licensed clinical social worker;~~
~~4. A licensed professional clinical counselor;~~
~~5. A licensed professional art therapist;~~
~~6. A licensed marriage and family therapist;~~
~~7. A physician;~~
~~8. A psychiatrist;~~
~~9. An advanced practice registered nurse;~~
~~10. A licensed behavior analyst; or~~
~~11. A behavioral health practitioner under supervision;~~
~~(c) Psychological testing provided by:~~
~~1. A licensed psychologist;~~
~~2. A licensed psychological associate working under the supervision of a licensed psychologist; or~~
~~3. A licensed psychological practitioner;~~
~~(d) Day treatment, mobile crisis services, or residential services for substance use disorders provided by:~~
~~1. A licensed psychologist;~~
~~2. A licensed psychological practitioner;~~
~~3. A licensed clinical social worker;~~
~~4. A licensed professional clinical counselor;~~
~~5. A licensed professional art therapist;~~
~~6. A licensed marriage and family therapist;~~
~~7. A physician;~~
~~8. A psychiatrist;~~
~~9. An advanced practice registered nurse;~~
~~10. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst; or~~
~~11. A peer support specialist working under the supervision of:~~
~~a. An approved behavioral health services provider; or~~
~~b. A certified alcohol and drug counselor;~~
~~(e) Peer support provided by a peer support specialist working under the supervision of:~~
~~1. An approved behavioral health services provider; or~~
~~2. A certified alcohol and drug counselor;~~
~~(f) Individual outpatient therapy, group outpatient therapy, or collateral outpatient therapy provided by:~~
~~1. A licensed psychologist;~~
~~2. A licensed psychological practitioner;~~
~~3. A licensed clinical social worker;~~
~~4. A licensed professional clinical counselor;~~
~~5. A licensed professional art therapist;~~
~~6. A licensed marriage and family therapist;~~
~~7. A physician;~~
~~8. A psychiatrist;~~
~~9. An advanced practice registered nurse;~~
~~10. A licensed behavior analyst; or~~
~~11. A behavioral health practitioner under supervision;~~
~~(g) Family outpatient therapy provided by:~~
~~1. A licensed psychologist;~~
~~2. A licensed psychological practitioner;~~
~~3. A licensed clinical social worker;~~
~~4. A licensed professional clinical counselor;~~
~~5. A licensed professional art therapist;~~
~~6. A licensed marriage and family therapist;~~
~~7. A physician;~~
~~8. A psychiatrist;~~
~~9. An advanced practice registered nurse; or~~
~~10. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst;~~
~~(h) Service planning provided by:~~
~~1. A licensed psychologist;~~
~~2. A licensed psychological practitioner;~~
~~3. A licensed clinical social worker;~~
~~4. A licensed professional clinical counselor;~~
~~5. A licensed professional art therapist;~~
~~6. A licensed marriage and family therapist;~~
~~7. A physician;~~
~~8. A psychiatrist;~~
~~9. An advanced practice registered nurse;~~
~~10. A licensed behavior analyst; or~~
~~11. A behavioral health practitioner under supervision except for a certified alcohol and drug counselor;~~
~~(i) A screening, brief intervention, and referral to treatment for a substance use disorder or SBIRT provided by:~~
~~1. A licensed psychologist;~~
~~2. A licensed psychological practitioner;~~
~~3. A licensed clinical social worker;~~
~~4. A licensed professional clinical counselor;~~
~~5. A licensed professional art therapist;~~
~~6. A licensed marriage and family therapist;~~
~~7. A physician;~~
~~8. A psychiatrist;~~
~~9. An advanced practice registered nurse; or~~
~~10. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst;~~
~~(j) Assertive community treatment provided by:~~
~~1. A licensed psychologist;~~
~~2. A licensed psychological practitioner;~~
~~3. A licensed clinical social worker;~~
~~4. A licensed professional clinical counselor;~~
~~5. A licensed professional art therapist;~~
~~6. A licensed marriage and family therapist;~~
~~7. A physician;~~
~~8. A psychiatrist;~~
~~9. An advanced practice registered nurse;~~
~~10. A behavioral health practitioner under supervision except for a:~~
~~a. Licensed assistant behavior analyst; or~~
~~b. Certified alcohol and drug counselor;~~
~~11. A peer support specialist working under the supervision of an approved behavioral health services provider; or~~
~~12. A community support associate;~~
~~(k) Comprehensive community support services provided by:~~
~~1. A licensed psychologist;~~
~~2. A licensed psychological practitioner;~~
~~3. A licensed clinical social worker;~~
~~4. A licensed professional clinical counselor;~~
~~5. A licensed professional art therapist;~~
~~6. A licensed marriage and family therapist;~~
~~7. A physician;~~
~~8. A psychiatrist;~~
~~9. An advanced practice registered nurse;~~
~~10. A licensed behavior analyst;~~
~~11. A behavioral health practitioner under supervision except for a certified alcohol and drug counselor; or~~
~~12. A community support associate; or~~
~~(l) Therapeutic rehabilitation program services provided by:~~
~~1. A licensed psychologist;~~
~~2. A licensed psychological practitioner;~~
~~3. A licensed clinical social worker;~~
~~4. A licensed professional clinical counselor;~~
~~5. A licensed professional art therapist;~~
~~6. A licensed marriage and family therapist;~~
~~7. A physician;~~
~~8. A psychiatrist;~~
~~9. An advanced practice registered nurse;~~
~~10. A behavioral health practitioner under supervision except for a:~~
~~a. Licensed assistant behavior analyst; or~~
~~b. Certified alcohol and drug counselor; or~~
~~11. A peer support specialist working under the supervision of an approved behavioral health services provider.~~
~~(3)~~](a) A screening shall:
1. Determine[~~Be the determination of~~] the likelihood that an individual has a mental health disorder, substance use disorder, or co-occurring disorders;
2. Not establish the presence or specific type of disorder;[~~and~~]
3. Establish the need for an in-depth assessment;
4. Be face-to-face or via telehealth, as appropriate pursuant to

907 KAR 3:170; and

5. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(b) An assessment shall:

1. Include gathering information and engaging in a process with the individual that enables the practitioner to:

a. Establish the presence or absence of a mental health disorder**, substance use disorder, or co-occurring disorders**[~~, substance use disorder, or co-occurring disorders~~];

b. Determine the individual's readiness for change;

c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and

d. Engage the individual in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the individual to develop a plan of care; [~~and~~]

4. Not include psychological or psychiatric evaluations or assessments;

5. Be face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and

6. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(c)1. Psychological testing shall include:

a.[~~1.~~] A psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities; and

b.[~~2.~~] Interpretation and a written report of testing results.

2. Psychological testing shall be provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170.

3. Psychological testing shall be provided by:

a. A licensed psychologist;

b. A certified psychologist with autonomous functioning;

c. A licensed psychological practitioner;

d. A certified psychologist under supervision; or

e. A licensed psychological associate under supervision.

(d) Crisis intervention:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:

a. The recipient; or

b. Another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals;

3. Shall be provided:

a.**[~~On-site at the behavioral health services organization's office;~~**

**~~b.~~]** As an immediate relief to the presenting problem or threat; and

**b.[~~c.~~]** In a**[~~face-to-face,~~]** one (1) on one (1) encounter between the provider and the recipient**, which is delivered either face-to-face** or as a comparable service provided via telehealth as appropriate pursuant to 907 KAR 3:170;

4. Shall be followed by a referral to non-crisis services if applicable;[~~and~~]

5. May include:

a. Further service prevention planning including[~~:~~

~~(i)~~] lethal means reduction for suicide risk[~~; or~~

~~(ii) Substance use disorder relapse prevention~~]; or

b. Verbal de-escalation, risk assessment, or cognitive therapy; and

6. Shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(e) Mobile crisis services shall:

1. Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year;

2. Be provided for a duration of less than twenty-four (24) hours;

3. Not be an overnight service;

4. Be provided via face-to-face contact**[~~or telehealth, as appropriate pursuant to 907 KAR 3:170,~~]** by a multi-disciplinary team based intervention in a home or community setting that ensures access to mental health[~~and substance use disorder~~] services and supports to:

a.[~~(i)~~] Reduce symptoms or harm; or

b.[~~(ii)~~] Safely transition an individual in an acute crisis to the appropriate least restrictive level of care;

5. Involve all services and supports necessary to provide:

a. Integrated crisis prevention;

b. Assessment and disposition;

c. Intervention;

d. Continuity of care recommendations; and

e. Follow-up services; [~~and~~]

6. Be provided face-to-face in a home or community setting;

7. Include access to a board-certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year; and

8. Be provided by:

a. An approved behavioral health practitioner;

b. An approved behavioral health practitioner under supervision; or

c. A peer support specialist who:

(i) Is under the supervision of an approved behavioral health practitioner; and

(ii) Provides support services under this paragraph.

(f)1. Day treatment shall be a non-residential, intensive treatment program for a child under the age of twenty-one (21) years who has:

a. A mental health disorder[~~, substance use disorder, or co-occurring mental health and substance use disorders~~]; and

b. A high risk of out-of-home placement due to a behavioral health issue.

2. Day treatment shall:

a. Consist of an organized, behavioral health program of treatment and rehabilitative services;

b. Include:

(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

(ii) Behavior management and social skills training;

(iii) Independent living skills that correlate to the age and developmental stage of the recipient; or

(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

c. Be provided:

(i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

(ii) On school days and during scheduled school breaks;

(iii) In coordination with the recipient's individualized education program[~~educational plan~~] or Section 504 plan if the recipient has an individualized education program[~~educational plan~~] or Section 504 plan;

(iv) Under the supervision of an approved[~~a licensed or certified~~] behavioral health practitioner or an approved[~~a~~] behavioral health practitioner [~~working~~] under [~~clinical~~] supervision;[~~and~~]

(v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider; and

(vi) Face-to-face.

3. To provide day treatment services, a behavioral health services organization shall have:

a. The capacity to employ staff authorized to provide day treatment services in accordance with this section and to coordinate the provision of services among team members; and

b. Knowledge of mental health[~~substance use~~] disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education program[~~plan~~] or Section 504 plan.

5.a. Day treatment shall be provided by:

(i) An approved behavioral health practitioner; or

(ii) An approved behavioral health practitioner under supervision.

b. A peer support specialist working under the supervision of an approved behavioral health practitioner may provide support services under this paragraph.

(g)1. Peer support services shall:

a. Be emotional support that is provided by:

(i) An individual who has been trained and certified in accordance with 908 KAR 2:220 and who is experiencing or has experienced a mental health disorder[~~, substance use disorder, or co-occurring mental health and substance use disorders~~] to a recipient by sharing a similar mental health disorder[~~, substance use disorder, or co-occurring mental health and substance use disorders~~] in order to bring about a desired social or personal change;

(ii) A parent or other family member, who has been trained and certified in accordance with 908 KAR 2:230, of a child having or who has had a mental health disorder[~~, substance use, or co-occurring mental health and substance use disorders~~] to a parent or family member of a child sharing a similar mental health disorder[~~, substance use, or co-occurring mental health and substance use disorders~~] in order to bring about a desired social or personal change; or

(iii) An individual[~~A family member~~], who has been trained and certified in accordance with 908 KAR 2:240 and identified as experiencing as a child or youth an emotional, social, or behavioral disorder that is defined in the current version of the Diagnostic and Statistical Manual for Mental Disorders[~~2:230, of a child having or who has had a mental health, substance use, or co-occurring mental health and substance use disorders to a parent or family member of a child sharing a similar mental health, substance use, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change~~];

b. Be an evidence-based practice;

c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;

d. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

e. Be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

f. Be identified in each recipient's plan of care;[~~and~~]

g. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's plan of care; and

h. Be provided face-to-face.

2. To provide peer support services, a behavioral health services organization shall:

a. Have demonstrated:

(i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240;

c. Use an approved behavioral health practitioner[~~services provider or certified alcohol and drug counselor~~] to supervise peer support specialists;

d. Have the capacity to coordinate the provision of services among team members;[~~and~~]

e. Have the capacity to provide on-going continuing education and technical assistance to peer support specialists;

f. Require individuals providing peer support services to recipients to provide no more than **thirty (30) hours[~~120 units~~]** per week of direct recipient contact; and

g. Require peer support services provided to recipients in a group setting not exceed eight (8) individuals within any group at a time.

(h)1. Intensive outpatient program services shall:

a. Be an alternative to or transition from a higher level of care[~~inpatient hospitalization or partial hospitalization~~] for a mental health disorder[~~, substance use disorder, or co-occurring disorders~~];

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Be provided at least three (3) hours per day at least three (3) days per week for adults;[~~and~~]

d. Be provided at least six (6) hours per week for adolescents;

e. Include:

(i) Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;

(ii) Crisis intervention; or

(iii) Psycho-education related to identified goals in the recipient's treatment plan; and

f. Be provided face-to-face.

2. During psycho-education, the recipient or recipient's family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a behavioral health services organization shall have:

a. Access to a board-certified or board-eligible psychiatrist for consultation;

b. Access to a psychiatrist, physician, or advanced practiced registered nurse for medication prescribing and monitoring;

c. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) recipients to one (1) staff person;

d. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles; and

e. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members.

5. Intensive outpatient program services shall be provided by:

a. An approved behavioral health practitioner, except for a licensed behavior analyst; or

b. An approved behavioral health practitioner under supervision, except for a licensed assistant behavior analyst.

(i) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the individual; and

b. Restoration of a recipient to the recipient's best possible functional level[~~Recovery~~] from a[~~substance use disorder,~~] mental health disorder[~~, or co-occurring mental health and substance use disorders~~];

2. Consist of:

a. A**[~~face-to-face,~~]** one (1) on one (1) encounter between the provider and recipient**, which is delivered either face-to-face** or provided via telehealth as appropriate pursuant to 907 KAR 3:170; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning; [~~and~~]

4. Not exceed three (3) hours per day, alone or in combination with any other outpatient therapy per recipient, unless additional time is medically necessary; and

5. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(j)1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;

b. Be provided to promote the:

(i) Health and wellbeing of the individual; and

(ii) Restoration of a recipient to the recipient's best possible functional level[~~Recovery~~] from a[~~substance use disorder,~~] mental health disorder[~~, or co-occurring mental health and substance use disorders~~];

c. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

d. Be provided to a recipient in a group setting:

(i) Of nonrelated individuals except for multi-family group therapy; and

(ii) Not to exceed twelve (12) individuals in size;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;

f. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

g. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

h. Not exceed three (3) hours per day, alone or in combination with any other outpatient therapy, per recipient unless additional time is medically necessary.

2. The group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of group outpatient therapy shall relate to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

5. Group outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(k)1. Family outpatient therapy shall consist of a face-to-face behavioral health therapeutic intervention or occur via telehealth as appropriate pursuant to 907 KAR 3:170, ***and shall be*** provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.

3. Family outpatient therapy shall:

a. Be provided to promote the:

(i) Health and wellbeing of the individual; or

(ii) Restoration of a recipient to the recipient's best possible functional level[~~Recovery~~] from a[~~substance use disorder,~~] mental health disorder[~~, or co-occurring mental health and substance use disorders~~]; and

b. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient[~~individual~~] unless additional time is medically necessary.

4. Family outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(l)1. Collateral outpatient therapy shall:

a. Consist of a face-to-face behavioral health consultation or occur via telehealth as appropriate pursuant to 907 KAR 3:170:

(i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's plan of care; and

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age[~~; and~~

~~c. Not exceed three (3) hours per day per individual unless additional time is medically necessary~~].

2. Written consent by a parent or custodial guardian to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

3. Collateral outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(m)1. Service planning shall:

a. Involve assisting a recipient in creating an individualized plan for services and developing measurable goals and objectives needed for maximum reduction of the effects of a mental health disorder;

b. Involve restoring a recipient's functional level to the recipient's best possible functional level; [~~and~~]

c. Be performed using a person-centered planning process; and

d. Be provided face-to-face.

2. A service plan:

a. Shall be directed and signed by the recipient;

b. Shall include practitioners of the recipient's choosing; and

c. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan.

3. Service planning shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(n) **Screening, brief intervention, and referral to treatment for a substance use disorder shall:**

**1. Be an evidence-based early intervention approach for an individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment;**

**2. Consist of:**

**a. Using a standardized screening tool to assess an individual for risky substance use behavior;**

**b. Engaging a recipient, who demonstrates risky substance use behavior, in a short conversation and providing feedback and advice; and**

**c. Referring a recipient to additional mental health disorder, substance use disorder, or co-occurring disorders services if the recipient is determined to need additional services to address substance use; and**

**3. Be provided by:**

**a. An approved behavioral health practitioner; or**

**b. An approved behavioral health practitioner under supervision.**

**(o)**[~~1. Residential services for substance use disorders shall:~~

~~a. Be provided in a twenty-four (24) hour per day unit that is a live-in facility that offers a planned and structured regimen of care aimed to treat individuals with addiction or co-occurring mental health and substance use disorders;~~

~~b. Be short or long-term to provide intensive treatment and skills building in a structured and supportive environment;~~

~~c. Assist an individual in abstaining from alcohol or substance use and in entering alcohol or drug addiction recovery;~~

~~d. Assist a recipient in making necessary changes in the recipient's life to enable the recipient to live drug- or alcohol-free;~~

~~e. Be provided under the medical direction of a physician;~~

~~f. Provide continuous nursing services in which a registered nurse shall be:~~

~~(i) On-site during traditional first shift hours, Monday through Friday;~~

~~(ii) Continuously available by phone after hours; and~~

~~(iii) On-site as needed in follow-up to telephone consultation after hours;~~

~~g. Be based on individual need and may include:~~

~~(i) A screening;~~

~~(ii) An assessment;~~

~~(iii) Service planning;~~

~~(iv) Individual outpatient therapy;~~

~~(v) Group outpatient therapy;~~

~~(vi) Family outpatient therapy; or~~

~~(vii) Peer support; and~~

~~h. Be provided in accordance with 908 KAR 1:370.~~

~~2.a. Except as established in clause b of this subparagraph, the physical structure in which residential services for substance use disorders is provided shall:~~

~~(i) Have between nine (9) and sixteen (16) beds; and~~

~~(ii) Not be part of multiple units comprising one (1) facility with more than sixteen (16) beds in aggregate.~~

~~b. If every recipient receiving services in the physical structure is under the age of twenty-one (21) years or over the age of sixty-five (65) years, the limit of sixteen (16) beds established in clause a of this subparagraph shall not apply.~~

~~3. A short-term length-of-stay for residential services for substance use disorders:~~

~~a. Shall be less than thirty (30) days in duration;~~

~~b. Shall include planned clinical program activities constituting at least fifteen (15) hours per week of structured professionally-directed treatment activities to:~~

~~(i) Stabilize a recipient's substance use disorder; and~~

~~(ii) Help the recipient develop and apply recovery skills; and~~

~~c. May include the services listed in subparagraph 1.g. of this paragraph.~~

~~4. A long-term length-of-stay for residential services for substance use disorders:~~

~~a. Shall be between thirty (30) days and ninety (90) days in duration;~~

~~b. Shall include planned clinical program activities constituting at least forty (40) hours per week of structured professionally-directed treatment activities to:~~

~~(i) Stabilize a recipient's substance use disorder; and~~

~~(ii) Help the recipient develop and apply recovery skills; and~~

~~c. May include the services listed in subparagraph 1.g. of this paragraph.~~

~~5. Residential services for substance use disorders shall not include:~~

~~a. Room and board;~~

~~b. Educational services;~~

~~c. Vocational services;~~

~~d. Job training services;~~

~~e. Habilitation services;~~

~~f. Services to an inmate in a public institution pursuant to 42 C.F.R. 435.1010;~~

~~g. Services to an individual residing in an institution for mental diseases pursuant to 42 C.F.R. 435.1010;~~

~~h. Recreational activities;~~

~~i. Social activities; or~~

~~j. Services required to be covered elsewhere in the Medicaid state plan.~~

~~6. To provide residential services for substance use disorders, a behavioral health services organization shall:~~

~~a. Have the capacity to employ staff authorized to provide services in accordance with this section and to coordinate the provision of services among team members; and~~

~~b. Be licensed as a non-medical and non-hospital based alcohol and other drug abuse treatment program in accordance with 908 KAR 1:370.~~

~~(o) Screening, brief intervention, and referral to treatment for a substance use disorder shall:~~

~~1. Be an evidence-based early intervention approach for an individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; and~~

~~2. Consist of:~~

~~a. Using a standardized screening tool to assess an individual for risky substance use behavior;~~

~~b. Engaging a recipient, who demonstrates risky substance use behavior, in a short conversation and providing feedback and advice; and~~

~~c. Referring a recipient to additional mental health disorder, substance use disorder, or co-occurring disorders services if the recipient is determined to need additional services to address substance use.~~

~~(p)~~]1. Assertive community treatment shall:

a. Be an evidence-based psychiatric rehabilitation practice that[~~which~~] provides a comprehensive approach to service delivery for individuals with a serious mental illness;[~~and~~]

b. Include:

(i) Assessment;

(ii) Treatment planning;

(iii) Case management;

(iv) Psychiatric services;

(v)[~~Medication prescribing and monitoring;~~

~~(vi)~~] Individual outpatient therapy;

(vi)[~~(vii)~~] Family outpatient therapy;

(vii)[~~(viii)~~] Group outpatient therapy;

(viii)[~~(ix)~~] Mobile crisis services;

(ix)[~~(x)~~] Crisis intervention;

(x)[~~(xi)~~] Mental health consultation; or

(xi)[~~(xii)~~] Family support and basic living skills; and

c. Be provided face-to-face.

2.a. Mental health consultation shall involve brief, collateral interactions with other treating professionals who may have information for the purpose of treatment planning and service delivery.

b. Family support shall involve the assertive community treatment team's working with the recipient's natural support systems to improve family relations in order to:

(i) Reduce conflict; and

(ii) Increase the recipient's autonomy and independent functioning.

c. Basic living skills shall be rehabilitative services focused on teaching activities of daily living necessary to maintain independent functioning and community living.

3. To provide assertive community treatment services, a behavioral health services organization shall:

a. Employ at least one (1) team of multidisciplinary professionals:

(i) Led by an approved behavioral health services practitioner[~~provider~~]; and

(ii) Comprised of at least four (4) full-time equivalents including a prescriber, a nurse, an approved behavioral health services practitioner[~~provider~~], or a case manager[~~, or a co-occurring disorder specialist~~];

b. Have adequate staffing to ensure that a[~~no~~] team's caseload size shall not ***exceed***[~~exceeds~~] ten (10) participants per team member (for example, if the team includes five (5) individuals, the caseload for the team shall not exceed fifty (50) recipients);

c. Have the capacity to:

(i) Employ staff authorized to provide assertive community treatment services in accordance with this paragraph;

(ii) Coordinate the provision of services among team members;

(iii) Provide the full range of assertive community treatment services as stated in this paragraph; and

(iv) Document and maintain individual case records; and

d. Demonstrate experience in serving individuals with persistent and serious mental illness who have difficulty living independently in the community.

4. Assertive community treatment shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

5.a. A peer support specialist under the supervision of an approved behavioral health practitioner may provide support services under this paragraph.

b. A community support associate under supervision of an approved behavioral health practitioner may provide support services under this paragraph.

**(p)[{o}]**[~~(q)~~]1. Comprehensive community support services shall:

a. Be activities necessary to allow an individual to live with maximum independence in the community;

b. Be intended to ensure successful community living through the utilization of skills training as identified in the recipient's plan of care;[~~and~~]

c. Consist of using a variety of psychiatric rehabilitation techniques to:

(i) Improve daily living skills;
(ii) Improve self-monitoring of symptoms and side effects;
(iii) Improve emotional regulation skills;
(iv) Improve crisis coping skills; and
(v) Develop and enhance interpersonal skills; and
d. Be provided face-to-face.
2. To provide comprehensive community support services, a behavioral health services organization shall:
a. Have the capacity to employ staff authorized pursuant to 908 KAR 2:250 to provide comprehensive community support services [in accordance with subsection (2)(k) of this section] and to coordinate the provision of services among team members; and
b. Meet the requirements for comprehensive community support services established in 908 KAR 2:250.
3. Comprehensive community support services shall be provided by:
a. An approved behavioral health practitioner; or
b. An approved behavioral health practitioner under supervision.
4.***[a.]*** A community support associate under supervision of an approved behavioral health practitioner may provide support services under this paragraph.***[b. A registered behavior]*****[behavioral]*****[technician under the supervision of a licensed behavior analyst may provide support services under this paragraph.]***
**(q)[(p)]**[(r)]1. Therapeutic rehabilitation program services shall be:
a. A rehabilitative service for an:
(i) Adult with a serious mental illness; or
(ii) Individual under the age of twenty-one (21) years who has a serious emotional disability; [and]
b. Designed to maximize the reduction of the effects of a mental health disorder and the restoration of the individual's functional level to the individual's best possible functional level; and
c. Provided face-to-face.
2. A recipient in a therapeutic rehabilitation program shall establish the recipient's own rehabilitation goals within the person-centered service plan.
3. A therapeutic rehabilitation program shall:
a. Provide face-to-face, on-site psychiatric rehabilitation and supports;
b. Be delivered using a variety of psychiatric rehabilitation techniques;
c.[b.] Focus on:
(i) Improving daily living skills;
(ii) Self-monitoring of symptoms and side effects;
(iii) Emotional regulation skills;
(iv) Crisis coping skill; and
(v) Interpersonal skills; [and]
d.[c.] Be delivered individually or in a group; and
e. Include:
(i) An individualized plan of care identifying measurable goals and objectives including discharge and relapse prevention planning;
(ii) Coordination of services the individual may be receiving; and
(iii) Referral to other necessary service supports as needed.
4. Therapeutic rehabilitation staffing shall include:
a. Licensed clinical supervision, consultation, and support to direct care staff; and
b. Direct care staff to provide scheduled therapeutic activities, training, and support for Medicaid recipients.
5. Therapeutic rehabilitation program services shall be provided by:
a. An approved behavioral health practitioner, except for a licensed behavior analyst; or
b. An approved behavioral health practitioner under supervision, except for a licensed assistant behavior analyst.
6. A peer support specialist working under the supervision of an approved behavioral health practitioner may provide support services under this paragraph.
**(r)[(q)]**1. Partial hospitalization services shall be:
a. Short-term with an average of four (4) to six (6) weeks;
b. Less than twenty-four (24)-hours each day; and
c. An intensive treatment program for an individual who is experiencing significant impairment to daily functioning due to a mental health disorder.
2. Partial hospitalization may be provided to an adult or a minor.
3. Admission criteria for partial hospitalization shall be based on an inability of community-based therapies or intensive outpatient services to adequately treat the recipient.
4. A partial hospitalization program shall consist of:
a. Individual outpatient therapy;
b. Group outpatient therapy;
c. Family outpatient therapy; or
d. Medication management.
5. The department shall not reimburse for educational, vocational, or job training services provided as part of partial hospitalization.
6. An outpatient behavioral health services organization's partial hospitalization program shall have an agreement with the local educational authority to come into the program to provide all educational components and instruction that are not Medicaid billable or reimbursable.
7. Partial hospitalization shall be:
a. Provided for at least four (4) hours per day;**[and]**
b. Focused on one (1) primary presenting problem**; and**
**c. Provided face-to-face**.
8. A partial hospitalization program operated by a behavioral health services organization shall:
a. Include the following personnel for the purpose of providing medical care:
(i) An advanced practice registered nurse, a physician assistant, or a physician available on site; and
(ii) A board-certified or board-eligible psychiatrist available for consultation; and
b. Have the capacity to:
(i) Provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;
(ii) Employ required practitioners and coordinate service provision among rendering practitioners; and
(iii) Provide the full range of services included in the scope of partial hospitalization established in this paragraph.
9. Partial hospitalization services shall be provided by:
a. An approved behavioral health practitioner; or
b. An approved behavioral health practitioner under supervision.
***(s)1. Applied behavior analysis services shall produce socially significant improvement in human behavior via the:***
***a. Design, implementation, and evaluation of environmental modifications;***
***b. Use of behavioral stimuli and consequences; or***
***c. Use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.***
***2. Applied behavior analysis shall be based on scientific research and the direct observation and measurement of behavior and environment, which utilize contextual factors, establishing operations, antecedent stimuli, positive reinforcement, and other consequences to assist recipients in:***
***a. Developing new behaviors;***
***b. Increasing or decreasing existing behaviors; and***
***c. Eliciting behaviors under specific environmental conditions.***
***3. Applied behavior analysis services may include principles, methods, and procedures of the experimental analysis of behavior and applied behavior analysis, including applications of those principles, methods, and procedures to:***
***a. Design, implement, evaluate, and modify treatment programs to change the behavior of individuals;***
***b. Design, implement, evaluate, and modify treatment programs to change the behavior of individuals that interact with a recipient;***
***c. Design, implement, evaluate, and modify treatment***

***programs to change the behavior of a group or groups that interact with a recipient; or***

***d. Consult with individuals and organizations.***

***4.a. Applied behavior analysis services shall be provided by:***

***(i) A licensed behavior analyst;***

***(ii) A licensed assistant behavior analyst;***

***(iii) An approved behavioral health practitioner with documented training in applied behavior analysis; or***

***(iv) An approved behavioral health practitioner under supervision with documented training in applied behavior analysis.***

***b. A registered behavior technician under the supervision of an appropriate practitioner pursuant to clause a. of this subparagraph may provide support services under this paragraph.***

***(4)(a) Laboratory services shall be reimbursable in accordance with 907 KAR 1:028 if provided by a BHSO I if:***

***1. The BHSO I has the appropriate CLIA certificate to perform laboratory testing pursuant to 907 KAR 1:028; and***

***2. The services are prescribed by a physician, advanced practice registered nurse, or physician assistant who has a contractual relationship with the BHSO I.***

***(b) Laboratory services may be administered, as appropriate, by:***

***1. An approved behavioral health practitioner; or***

***2. An approved behavioral health practitioner under supervision.***[~~(4) The extent and type of a screening shall depend upon the problem of the individual seeking or being referred for services.~~

~~(5) A diagnosis or clinical impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.~~

~~(6) The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider.~~]

Section 4. Additional Limits and Non-covered Services or Activities. (1)(a) Except as established in paragraph (b) of this subsection, unless a diagnosis is made and documented in the recipient's medical record within three (3) visits, the service shall not be covered.

(b) The requirement established in paragraph (a) of this subsection shall not apply to:

1. Mobile crisis services;

2. Crisis intervention;

3. A screening; or

4. An assessment.

(2) [~~For a recipient who is receiving residential services for substance use disorders, the following shall not be billed or reimbursed for the same date of service for the recipient:~~

~~(a) A screening;~~

~~(b) An assessment;~~

~~(c) Service planning;~~

~~(d) A psychiatric service;~~

~~(e) Individual outpatient therapy;~~

~~(f) Group outpatient therapy;~~

~~(g) Family outpatient therapy; or~~

~~(h) Peer support services.~~

~~(3)~~] For a recipient who is receiving assertive community treatment, the following shall not be billed or reimbursed for the same date of service for the recipient:

(a) An assessment;

(b) Case management;

(c) Individual outpatient therapy;

(d) Group outpatient therapy;

(e) Peer support services; or

(f) Mobile crisis services.

(3)[~~(4)~~] The department shall not reimburse for both a screening provided pursuant to this administrative regulation and a screening, brief intervention and referral to treatment (SBIRT)[~~an SBIRT~~] provided**[pursuant to 907 KAR 15:022]** to a recipient on the same date of service.

(4)[~~(5)~~] The following services or activities shall not be covered under this administrative regulation:

(a) A service provided to:

1. A resident of:

a. A nursing facility; or

b. An intermediate care facility for individuals with an intellectual disability;

2. An inmate of a federal, local, or state:

a. Jail;

b. Detention center; or

c. Prison; or

3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;

(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the behavioral health services organization;

(c) A consultation or educational service provided to a recipient or to others;

(d) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of "face-to-face" established in 907 KAR 15:005, Section 1(21). Contact prohibited under subparagraph 1. of this paragraph may be permissible if it is conducted in the course of a telehealth service permitted pursuant to 907 KAR 3:170 or this administrative regulation, as applicable[~~(14)~~];

(e) Travel time;

(f) A field trip;

(g) A recreational activity;

(h) A social activity; or

(i) A physical exercise activity group.

(5)[~~(6)~~](a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except as established in Section 3**(3)[~~(6)~~]**[~~(3)~~](l)1. of this administrative regulation.

(b) A third party contract shall not be covered under this administrative regulation.

(6)[~~(7)~~] A billing supervisor arrangement between a billing supervisor and an approved[~~a~~] behavioral health practitioner under supervision shall not violate the supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the approved behavioral health practitioner under supervision.

Section 5. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a behavioral health services organization.

Section 6. Records Maintenance, Documentation, Protection, and Security. (1) A behavioral health services organization shall maintain a current health record for each recipient.

(2)[~~(a)~~] A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.[~~(b) The individual who provided the service shall date and sign the health record on the date that the individual provided the service except as established in subsection (5)(a) of this section.~~]

(3) A health record shall:

(a) Include:

1. An identification and intake record including:

a. Name;

b. Social Security number;

c. Date of intake;

d. Home (legal) address;

e. Health insurance or Medicaid information;

f. Referral source and address of referral source;

g. Primary care physician and address;

h. The reason the individual is seeking help including the presenting problem and diagnosis;

i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The physical health provider; and

j. The name of the informant and any other information deemed necessary by the behavioral health services organization to comply with the requirements of:

(i) This administrative regulation;

(ii) The behavioral health services organization's licensure board;

(iii) State law; or

(iv) Federal law;

2. Documentation of the:

a. Screening;

b. Assessment if an assessment was performed; and

c. Disposition if a disposition was performed;

3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services; and

(b) Be:

1. Maintained in an organized central file;

2. Furnished to the:

a. Cabinet for Health and Family Services upon request; or

b. Managed care organization in which the recipient is enrolled upon request if the recipient is enrolled with a managed care organization;

3. Made available for inspection and copying by:

a. Cabinet for Health and Family Services' personnel; or

b. Personnel of the managed care organization in which the recipient is enrolled if the recipient is enrolled with a managed care organization;

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient received services beyond a screening.

(4) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(5)(a) A behavioral health services organization's service note[~~notes~~] regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit; [~~and~~]

2. Indicate if the service was provided face-to-face or via telehealth; and

3. Describe the:

a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

b. Therapist's intervention;

c. Changes in the plan of care if changes are made; and

d. Need for continued treatment if continued treatment is needed.

(b)1. Any edit to notes shall:

a. Clearly display the changes; and

b. Be initialed and dated by the person who edited the notes.

2. Notes shall not be erased or illegibly marked out.

(c)1. Notes recorded by an approved[~~a~~] behavioral health practitioner [~~working~~] under supervision shall be co-signed and dated by the supervising professional within thirty (30) days.

2. If services are provided by an approved[~~a~~] behavioral health practitioner [~~working~~] under supervision, there shall be a monthly supervisory note recorded by the supervising professional reflecting consultations with the approved behavioral health practitioner [~~working~~] under supervision concerning the:

a. Case; and

b. Supervising professional's evaluation of the services being provided to the recipient.

(6) Immediately following a screening of a recipient, the practitioner shall perform a disposition related to:

(a) A provisional diagnosis;

(b) A referral for further consultation and disposition, if applicable; or

(c)1. If applicable, termination of services and referral to an outside source for further services; or

2. If applicable, termination of services without a referral to further services.

(7) Any change to a recipient's plan of care shall be documented, signed, and dated by the rendering practitioner and by the recipient or recipient's representative.

(8)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;

2. Be dated;

3. Be titled to indicate the service rendered;

4. State a starting and ending time for the service; and

5. Be recorded and signed by the rendering practitioner and include the professional title (for example, licensed clinical social worker) of the provider.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not covered under this administrative regulation, or other non-reimbursable contacts shall:

1. Be recorded in the notes; and

2. Not be reimbursable.

(9)(a) A termination summary shall:

1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

2. Contain a summary of the significant findings and events during the course of treatment including the:

a. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's plan of care;

b. Final diagnosis of clinical impression; and

c. Individual's condition upon termination and disposition.

(b) A health record relating to an individual who terminated from receiving services shall be fully completed within ten (10) days following termination.

(10) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(11)(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring behavioral health services organization shall, within ten (10) business days of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

1.a. The Health Insurance Portability and Accountability Act;

b. 42 U.S.C. 1320d-2 to 1320d-8; and

c. 45 C.F.R. Parts 160 and 164; or

2.a. 42 U.S.C. 290 ee-3; and

b. 42 C.F.R. Part 2.

(b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, or an acute care hospital for care or treatment, the transferring behavioral health services organization shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

1.a. The Health Insurance Portability and Accountability Act;

b. 42 U.S.C. 1320d-2 to 1320d-8; and

c. 45 C.F.R. Parts 160 and 164; or

2.a. 42 U.S.C. 290 ee-3; and

b. 42 C.F.R Part 2.

(12)(a) If a behavioral health services organization's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of an owner or deaths of owners, the health records of the behavioral health services organization shall:

1. Remain the property of the behavioral health services organization; and

2. Be subject to the retention requirements established in subsection (13) of this section.

(b) A behavioral health services organization shall have a written plan addressing how to maintain health records in the event of death of an owner or deaths of owners.

(13)(a) Except as established in paragraph (b) or (c) of this subsection, a behavioral health services organization shall maintain a case record regarding a recipient for at least six (6) years from the date of the service or until any audit dispute or issue is resolved beyond six (6) years.

(b) After a recipient's death or discharge from services, a provider shall maintain the recipient's record for the longest of the following periods:

1. Six (6) years unless the recipient is a minor; or

2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection[~~section~~], pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(14)(a) A behavioral health services organization shall comply with 45 C.F.R. Part 164.

(b) All information contained in a health record shall:

1. Be treated as confidential;

2. Not be disclosed to an unauthorized individual; and

3. Be disclosed to an authorized representative of:

a. The department; or

b. Federal government.

(c)1. Upon request, a behavioral health services organization shall provide to an authorized representative of the department or federal government information requested to substantiate:

a. Staff notes detailing a service that was rendered;

b. The professional who rendered a service; and

c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department.

2. Failure to provide information required by subparagraph 1. of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 7. Medicaid Program Participation Compliance. (1) A behavioral health services organization shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a behavioral health services organization receives any duplicate payment or overpayment from the department, regardless of reason, the behavioral health services organization shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection[~~section~~] may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the behavioral health services organization accepts the payment:

1. The payment shall be considered payment in full;

2. A bill for the same service shall not be given to the recipient; and

3. Payment from the recipient for the same service shall not be accepted by the behavioral health services organization.

(b)1. A behavioral health services organization may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

a. Recipient requests the service; and

b. Behavioral health services organization makes the recipient aware in advance of providing the service that the:

(i) Recipient is liable for the payment; and

(ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1. of this paragraph, the:

a. Behavioral health services organization shall not bill the department for the service; and

b. Department shall not:

(i) Be liable for any part of the payment associated with the service; and

(ii) Make any payment to the behavioral health services organization regarding the service.

(4)(a) A behavioral health services organization shall attest by the behavioral health services organization's staff's or representative's signature that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;

2. Cabinet for Health and Family Services, Office of Inspector General, or its designee;

3. Kentucky Office of Attorney General or its designee;

4. Kentucky Office of the Auditor for Public Accounts or its designee; or

5. United States General Accounting Office or its designee.

(c) If a behavioral health services organization receives a request from the department to provide a claim, related information, related documentation, or record for auditing purposes, the behavioral health services organization shall provide the requested information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by a behavioral health services organization shall result in the suspension or termination of the behavioral health services organization from Medicaid Program participation.

Section 8. Third Party Liability. A behavioral health services organization shall comply with KRS 205.622.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A behavioral health services organization that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the behavioral health services organization's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the behavioral health services organization's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 10. Auditing Authority. The department shall have the authority to audit any:

(1) Claim;

(2) Medical record; or

(3) Documentation associated with any claim or medical record.

Section 11. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

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

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

Section 12. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 15, 2019 at 8 a.m.

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**CABINET FOR HEALTH AND FAMILY SERVICES**
**Department for Medicaid Services**
**Division of Policy and Operations**
**(As Amended at ARRS, November 12, 2019)**

**907 KAR 15:022. Coverage provisions and requirements regarding services provided by behavioral health services organizations for substance use disorder treatment and co-occurring disorders.**

RELATES TO: KRS 205.520, ***205.622, 309.0831, 369.101 - 369.120, 20 U.S.C. 1400 et seq., 21 U.S.C. 823(g)(2), 29 U.S.C. 701 et seq.,*** 42 U.S.C. ***290ee-3, 1320d-2 - 1320d-8,*** 1396a(a)(10)(B), 1396a(a)(23), 12101***, 42 C.F.R. Part 2, 431.17, 435.1010, 45 C.F.R. Parts 160, 164***

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by tier II and III behavioral health services organizations.

Section 1. General Coverage Requirements. (1) For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(a) Medically necessary; and

(b) Provided:

1. To a recipient; and

2. By a behavioral health services organization that meets the provider participation requirements established in Section 2 of this administrative regulation.

(2)(a) Direct contact between a practitioner and a recipient shall be required for each service except for:

1. Collateral outpatient therapy for a child under the age of twenty-one (21) years if the collateral outpatient therapy is in the child's plan of care;

2. A family outpatient service in which the corresponding current procedural terminology code establishes that the recipient is not present; or

3. A psychological testing service comprised of interpreting or explaining results of an examination or data to family members or other kin if the corresponding current procedural terminology code establishes that the recipient is not present.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A billable unit of service shall be actual time spent delivering a service in an encounter.

(4) A service shall be:

(a) Stated in the recipient's plan of care; and

(b) Provided in accordance with the recipient's plan of care.

(5)(a) A behavioral health services organization shall establish a plan of care for each recipient receiving services from the behavioral health services organization.

(b) A plan of care shall meet the plan of care requirements established in 908 KAR 1:370, Section 19.

Section 2. Provider Participation. (1) To be eligible to provide services under this administrative regulation, a behavioral health services organization shall:

(a) Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(b) Be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

(c) Have:

1. For each service it provides, the capacity to provide the full range of the service as established in this administrative regulation;

2. Documented experience in serving individuals with substance use disorders;

3. The administrative capacity to ensure quality of services;

4. A financial management system that provides documentation of services and costs; and

5. The capacity to document and maintain individual case records.

(2) A behavioral health services organization shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability;

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the Act; and

(c) Provide, directly or through written agreement with another behavioral health services provider, access to face-to-face or telehealth, as appropriate pursuant to 907 KAR 3:170, emergency services twenty-four (24) hours per day, seven (7) days per week.

(3)(a) Each behavioral health services organization II (BHSO II) shall provide services in accordance with 908 KAR 1:374 and this administrative regulation for outpatient substance use disorder services and co-occurring disorders.

(b) Each behavioral health services organization III (BHSO III) shall provide services in accordance with 908 KAR 1:372 and this administrative regulation for residential substance use disorder services and co-occurring disorders.

(4) A BHSO II shall:

(a) Possess an outpatient alcohol and other drug treatment entity (AODE) license issued pursuant to 908 KAR 1:370 and 908 KAR 1:374;

(b) ***Except as provided by subsection (6) of this section,*** possess accreditation within one (1) year of initial enrollment by one (1) of the following:

1. The Joint Commission;

2. The Commission on Accreditation of Rehabilitation Facilities;

3. The Council on Accreditation; or

4. A nationally recognized accreditation organization; and

(c) Be authorized to provide outpatient substance use disorder treatment services authorized by Section 3 of this administrative regulation to treat substance use disorders and co-occurring disorders by the appropriate provider.

(5) A BHSO III shall:

(a) Possess a residential alcohol and other drug treatment entity (AODE) license issued pursuant to 908 KAR 1:370 and 908 KAR 1:372;

(b) ***Except as provided by subsection (6) of this section,*** possess accreditation within one (1) year of initial enrollment by one (1) of the following:

1. The Joint Commission;

2. The Commission on Accreditation of Rehabilitation Facilities;

3. The Council on Accreditation; or

4. A nationally recognized accreditation organization; and

(c) Be authorized to provide residential substance use disorder treatment services authorized by Section 3 of this administrative regulation to treat substance use disorders and co-occurring disorders by the appropriate provider.

***(6) The department shall grant a one (1) time extension to a BHSO II or III that requests a one (1) time extension to***

***complete the accreditation process, if the request is submitted at least ninety (90) days prior to expiration of provider enrollment.***

Section 3. Covered Services.

(1)**[~~(a) A physician providing services in a BHSO II shall possess:~~**

**~~1. A psychiatric specialty; or~~**

**~~2. An addictionology specialty.~~**

**~~(b) An advanced practice registered nurse providing services in a BHSO II shall possess:~~**

**~~1. A psychiatric specialty; or~~**

**~~2. An addictionology specialty.~~**

**~~(c) A physician assistant providing behavioral health services in a BHSO II shall have a contractual relationship with a supervising physician with:~~**

**~~1. A psychiatric specialty; or~~**

**~~2. An addictionology specialty.~~**

**~~(2)~~]** Reimbursement shall not be available for services performed within a BHSO II by a:

(a) Licensed behavior analyst;

(b) Licensed assistant behavior analyst;

(c) Registered **behavior[~~behavioral~~]** technician; or

(d) Community support associate.

**(2)[~~(3)~~]** A BHSO III shall provide services on a residential basis to treat a beneficiary's substance use disorder.

**(3)[~~(4)(a) A physician providing services in a BHSO III shall possess:~~**

**~~1. A psychiatric specialty; or~~**

**~~2. An addictionology specialty.~~**

**~~(b) An advanced practice registered nurse providing services in a BHSO III shall possess:~~**

**~~1. A psychiatric specialty; or~~**

**~~2. An addictionology specialty.~~**

**~~(c) A physician assistant providing behavioral health services in a BHSO III shall have a contractual relationship with a supervising physician with:~~**

**~~1. A psychiatric specialty; or~~**

**~~2. An addictionology specialty.~~**

**~~(5)~~]** Reimbursement shall not be available for services performed within a BHSO III by a:

(a) Licensed behavior analyst;

(b) Licensed assistant behavior analyst;

(c) Registered **behavior[~~behavioral~~]** technician; or

(d) Community support associate.

**(4)[~~(6)~~]** Except as specified in the requirements stated for a given service, the services covered may be provided for:

(a) A substance use disorder; or

(b) Co-occurring disorders if provided in accordance with Section 2 of this administrative regulation.

**(5)[~~(7)~~]** The services established in this subsection shall be covered under this administrative regulation in accordance with the requirements established in this subsection.

(a) A screening shall:

1. Determine the likelihood that an individual has a mental health disorder, substance use disorder, or co-occurring disorders;

2. Not establish the presence or specific type of disorder;

3. Establish the need for an in-depth assessment;

4. Be **provided** face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and

5.**[~~In a BHSO II,~~]** Be provided by:

a. An approved behavioral health practitioner, as limited by subsections **(1)[~~(2)~~]** and **(3)[~~(5)~~]** of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsections **(1)[~~(2)~~]** and **(3)[~~(5)~~]** of this section.

(b) An assessment shall:

1. Include gathering information and engaging in a process with the individual that enables the practitioner to:

a. Establish the presence or absence of a substance use disorder**, mental health disorder,** or co-occurring disorders;

b. Determine the individual's readiness for change;

c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and

d. Engage the individual in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the individual to develop a plan of care;

4. Not include a psychological or psychiatric evaluation or assessment;

5. If being made for the treatment of a substance use disorder, utilize a multidimensional assessment that complies with the most current edition of The ASAM Criteria to determine the most appropriate level of care;

6. Be **provided** face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and

7. Be provided by:

a. An approved behavioral health practitioner, as limited by subsections **(1)[~~(2)~~]** and **(3)[~~(5)~~]** of this section; or

b. An approved behavioral health practitioner under supervision, **[~~except for a certified alcohol and drug counselor, and~~]** as limited by subsections **(1)[~~(2)~~]** and **(3)[~~(5)~~]** of this section.

(c) Psychological testing shall:

1. Include a psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities;

2. Include an interpretation and a written report of testing results;

3. Be face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and

4. Be provided by:

a. A licensed psychologist;

b. A certified psychologist with autonomous functioning;

c. A licensed psychological practitioner;

d. A certified psychologist under supervision; or

e. A licensed psychological associate under supervision.

(d) Crisis intervention:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:

a. The recipient; or

b. Another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals;

3. Shall be provided:

a.**[~~On-site at the behavioral health services organization's office;~~**

**~~b.~~]** As an immediate relief to the presenting problem or threat; and

**b.[~~c.~~]** In a**[~~face-to-face,~~]** one (1) on one (1) encounter between the provider and the recipient, **which is delivered either face-to-face or[~~including~~]** via telehealth if appropriate pursuant to 907 KAR 3:170;

4. Shall be followed by a referral to non-crisis services if applicable;

5. May include:

a. Further service prevention planning including:

(i) Lethal means reduction for suicide risk; or

(ii) Substance use disorder relapse prevention; or

b. Verbal de-escalation, risk assessment, or cognitive therapy; and

6. Shall be provided by:

a. An approved behavioral health practitioner, as limited by subsections **(1)[~~(2)~~]** and **(3)[~~(5)~~]** of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsections **(1)[~~(2)~~]** and **(3)[~~(5)~~]** of this section.

(e) Mobile crisis services shall:

1. Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year;

2. Be provided for a duration of less than twenty-four (24) hours;

3. Not be an overnight service;

4. Be a face-to-face**[~~or telehealth, as appropriate pursuant to 907 KAR 3:170,~~]** multi-disciplinary team based intervention in a home or community setting that ensures access to substance use disorder and co-occurring disorder services and supports to:

a. Reduce symptoms or harm; or

b. Safely transition an individual in an acute crisis to the appropriate least restrictive level of care;

5. Involve all services and supports necessary to provide:

a. Integrated crisis prevention;

b. Assessment and disposition;

c. Intervention;

d. Continuity of care recommendations; and

e. Follow-up services;

6. Include access to a board-certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year; and

7. Be provided by:

a. An approved behavioral health practitioner, as limited by subsections **(1)[~~(2)~~]** and **(3)[~~(5)~~]** of this section;

b. An approved behavioral health practitioner under supervision, **[~~except for a certified alcohol and drug counselor, and~~]** as limited by subsections **(1)[~~(2)~~]** and **(3)[~~(5)~~]** of this section; or

c. A peer support specialist who:

(i) Is under the supervision of an approved behavioral health practitioner; and

(ii) Provides support services for a mobile crisis service.

(f)1. Day treatment shall be a non-residential, intensive treatment program for a child under the age of twenty-one (21) years who has:

a. A substance use disorder or co-occurring disorders; and

b. A high risk of out-of-home placement due to a behavioral health issue.

2. Day treatment shall:

a. Be face-to-face;

b. Consist of an organized, behavioral health program of treatment and rehabilitative services;

c. Include:

(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

(ii) Behavior management and social skills training;

(iii) Independent living skills that correlate to the age and developmental stage of the recipient; or

(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

d. Be provided:

(i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

(ii) On school days and during scheduled school breaks;

(iii) In coordination with the recipient's individualized education program or Section 504 plan if the recipient has an individualized education program or Section 504 plan; **and**

(iv)**[~~Under the supervision of an approved behavioral health practitioner or an approved behavioral health practitioner under supervision, as limited by subsections (2) and (5) of this section; and~~**

**~~(v)~~]** With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider.

3. To provide day treatment services, a behavioral health services organization shall have:

a. The capacity to employ staff authorized to provide day treatment services in accordance with this section and to coordinate the provision of services among team members; and

b. Knowledge of substance use disorders and co-occurring disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education program or Section 504 plan.

5. Day treatment shall be provided by:

a. An approved behavioral health practitioner, as limited by subsections **(1)[~~(2)~~]** and **(3)[~~(5)~~]** of this section; or

b. An approved behavioral health practitioner under supervision, **[~~except for a certified alcohol and drug counselor, and~~]** as limited by subsections **(1)[~~(2)~~]** and **(3)[~~(5)~~]** of this section.

6. Day treatment support services conducted by a provider working under the supervision of an approved behavioral health practitioner may be provided by:

a. A registered alcohol and drug peer support specialist;

b. An adult peer support specialist;

c. A family peer support specialist; or

d. A youth peer support specialist.

(g)1. Peer support services shall:

a. Be emotional support that is provided by:

(i) An individual who has been trained and certified in accordance with 908 KAR 2:220 and who is experiencing or has experienced a substance use disorder or co-occurring disorders to a recipient by sharing a similar substance use disorder or co-occurring disorders in order to bring about a desired social or personal change;

(ii) A parent or other family member, who has been trained and certified in accordance with 908 KAR 2:230, of a child having or who has had a substance use or co-occurring disorders to a parent or family member of a child sharing a similar substance use or co-occurring disorders in order to bring about a desired social or personal change;

(iii) An individual who has been trained and certified in accordance with 908 KAR 2:240 and identified as experiencing a substance use disorder or co-occurring disorders**[~~, as defined in the current version of the Diagnostic and Statistical Manual for Mental Disorders~~]**; or

(iv) A registered alcohol and drug peer support specialist who has been trained and certified in accordance with KRS 309.0831 and is a self-identified consumer of substance use disorder services who provides emotional support to others with substance use disorders to achieve a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;

d. Be provided face-to-face;

e. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

f. Except for the engagement into substance use disorder treatment through an emergency department bridge clinic, be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

g. Be identified in each recipient's plan of care; and

h. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's plan of care.

2. To provide peer support services, a behavioral health services organization shall:

a. Have demonstrated:

(i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, 908 KAR 2:240, or KRS 309.0831;

c. Use an approved behavioral health practitioner to supervise peer support specialists;

d. Have the capacity to coordinate the provision of services among team members;

e. Have the capacity to provide on-going continuing education and technical assistance to peer support specialists;

f. Require individuals providing peer support services to recipients **to** provide no more than **thirty (30) hours[~~120 units~~]** per week of direct recipient contact; and

g. Require peer support services provided to recipients in a group setting not exceed eight (8) individuals within any group at one (1) time.

(h)1. Intensive outpatient program services shall:

a. Be an alternative to or transition from a higher level of care for a substance use disorder or co-occurring disorders;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than

individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Meet the service criteria, including the components for support systems, staffing, and therapies outlined in the most current edition of The ASAM Criteria for intensive outpatient level of care services;

d. Be provided face-to-face;

e. Be provided at least three (3) hours per day at least three (3) days per week for adults;

f. Be provided at least six (6) hours per week for adolescents; and

g. Include:

(i) Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;

(ii) Crisis intervention; or

(iii) Psycho-education related to identified goals in the recipient's treatment plan.

2. During psycho-education, the recipient or recipient's family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a behavioral health services organization shall have:

a. Access to a board-certified or board-eligible psychiatrist for consultation;

b. Access to a psychiatrist, physician, or advanced practiced registered nurse for medication prescribing and monitoring;

c. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) recipients to one (1) staff person;

d. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles; and

e. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members.

5. Intensive outpatient program services shall be provided by:

a. An approved behavioral health practitioner, as limited by subsections **(1)[~~(2)~~]** and **(3)[~~(5)~~]** of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsections **(1)[~~(2)~~]** and **(3)[~~(5)~~]** of this section.

(i) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the individual; and

b. Restoration of a recipient to their best possible functional level from a substance use disorder or co-occurring disorders;

2. Consist of:

a. A face-to-face encounter or via telehealth as appropriate pursuant to 907 KAR 3:170 that is a one (1) on one (1) encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning;

4. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary; and

5. Be provided by:

a. An approved behavioral health practitioner, as limited by subsections **(1)[~~(2)~~]** and **(3)[~~(5)~~]** of this section; or

b. An approved behavioral health practitioner under supervision, **[~~except for a certified alcohol and drug counselor, and~~]** as limited by subsections **(1)[~~(2)~~]** and **(3)[~~(5)~~]** of this section.

(j)1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;

b. Be provided to promote the:

(i) Health and wellbeing of the individual; and

(ii) Restoration of a recipient to their best possible functional level from a substance use disorder or co-occurring disorders;

c. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

d. Be provided to a recipient in a group setting:

(i) Of nonrelated individuals except for multi-family group therapy; and

(ii) Not to exceed twelve (12) individuals in size;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;

f. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

g. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

h. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

2. The group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of group outpatient therapy shall relate to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

5. Group outpatient therapy shall be provided by:

a. An approved behavioral health practitioner, as limited by subsections **(1)[~~(2)~~]** and **(3)[~~(5)~~]** of this section; or

b. An approved behavioral health practitioner under supervision, **[~~except for a certified alcohol and drug counselor, and~~]** as limited by subsections **(1)[~~(2)~~]** and **(3)[~~(5)~~]** of this section.

(k)1. Family outpatient therapy shall consist of a face-to-face or appropriate telehealth, pursuant to 907 KAR 3:170, behavioral health therapeutic intervention provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.

3. Family outpatient therapy shall:

a. Be provided to promote the:

(i) Health and wellbeing of the individual; or

(ii) Restoration of a recipient to their best possible functional level from a substance use disorder or co-occurring disorders; and

b. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

4. Family outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision**[~~, except for a certified alcohol and drug counselor~~]**.

(l)1. Collateral outpatient therapy shall:

a. Consist of a face-to-face or appropriate telehealth, provided pursuant to 907 KAR 3:170, behavioral health consultation:

(i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's plan of care; and

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age.

2. Written consent by a parent or custodial guardian to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

3. Collateral outpatient therapy shall be provided by:

a. An approved behavioral health practitioner, as limited by subsections **(1)[(2)]** and **(3)[(5)]** of this section; or

b. An approved behavioral health practitioner under supervision, **[~~except for a certified alcohol and drug counselor, and~~]** as limited by subsections **(1)[(2)]** and **(3)[(5)]** of this section.

(m)1. Service planning shall:

a. Be provided face-to-face;

b. Involve assisting a recipient in creating an individualized plan for services and developing measurable goals and objectives needed for maximum reduction of the effects of a substance use disorder or co-occurring disorders;

c. Involve restoring a recipient's functional level to the recipient's best possible functional level; and

d. Be performed using a person-centered planning process.

2. A service plan:

a. Shall be directed and signed by the recipient;

b. Shall include practitioners of the recipient's choosing; and

c. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan.

3. Service planning shall be provided by:

a. An approved behavioral health practitioner, as limited by subsections **(1)[(2)]** and **(3)[(5)]** of this section; or

b. An approved behavioral health practitioner under supervision, **[~~except for a certified alcohol and drug counselor, and~~]** as limited by subsections **(1)[(2)]** and **(3)[(5)]** of this section.

(n)1. Residential services for substance use disorders shall:

a. Be provided in a twenty-four (24) hour per day unit that is a live-in facility that offers a planned and structured regimen of care aimed to treat individuals with addiction or co-occurring disorders;

b. Provide intensive treatment and skills building in a structured and supportive environment;

c. Assist an individual in abstaining from alcohol or substance use and in entering alcohol or drug addiction recovery;

d. Assist a recipient in making necessary changes in the recipient's life to enable the recipient to live drug- or alcohol-free;

e. Be provided under the medical direction of a physician;

f. Provide continuous nursing services in which a registered nurse shall be:

(i) On-site during traditional first shift hours, Monday through Friday;

(ii) Continuously available by phone after hours; and

(iii) On-site as needed in follow-up to telephone consultation after hours;

g. Be provided following an assessment of an individual and a determination that the individual meets the dimensional admission criteria for approval of residential level of care placement in accordance with the most current edition of The ASAM Criteria; and

h. Be based on individual need and shall include clinical activities to help the recipient develop and apply recovery skills.

2. Residential services may include:

a. A screening;

b. An assessment;

c. Service planning;

d. Individual outpatient therapy;

e. Group outpatient therapy;

f. Family outpatient therapy;

g. Peer support;

h. Withdrawal management; or

i. Medication assisted treatment.

3. For recipients in residential substance use treatment, care coordination shall include at minimum:

a. If the recipient chooses medication assisted treatment, facilitation of medication assisted treatment off-site of the BHSO III, if not offered on-site;

b. Referral to appropriate community services;

c. Facilitation of medical and behavioral health follow ups; and

d. Linking the recipient to the appropriate level of substance use treatment within the continuum to provide ongoing supports.

4. Residential services shall be provided in accordance with 908 KAR 1:370 and 908 KAR 1:372.

5. Length-of-stay for residential services for substance use disorders shall be person-centered and according to an individually designed plan of care that is consistent with this administrative regulation and the licensure of the facility and practitioner.

6.a. Except as established in clause b. **or c.** of this subparagraph, the physical structure in which residential services for substance use disorders is provided shall:

(i) Have between nine (9) and sixteen (16) beds; and

(ii) Not be part of multiple units comprising one (1) facility with more than sixteen (16) beds in aggregate.

b. If every recipient receiving services in the physical structure is under the age of twenty-one (21) years or over the age of sixty-five (65) years, the limit of sixteen (16) beds established in clause a. of this subparagraph shall not apply.

**c. The limit of sixteen (16) beds established in clause a. of this subparagraph shall not apply if the facility possesses a departmental provisional certification to provide residential substance use disorder services that are equivalent to the appropriate level of The ASAM Criteria.**

7. Residential services for substance use disorders shall not include:

a. Room and board;

b. Educational services;

c. Vocational services;

d. Job training services;

e. Habilitation services;

f. Services to an inmate in a public institution pursuant to 42 C.F.R. 435.1010;

g. Services to an individual residing in an institution for mental diseases pursuant to 42 C.F.R. 435.1010;

h. Recreational activities;

i. Social activities; or

j. Services required to be covered elsewhere in the Medicaid state plan.

8. To provide residential services for substance use disorders, a behavioral health services organization shall:

a. Have the capacity to employ staff authorized to provide services in accordance with this section and to coordinate the provision of services among team members; **[~~and~~]**

b. Be licensed as a non-medical and non-hospital based alcohol and other drug abuse treatment entity in accordance with 908 KAR 1:370 and 908 KAR 1:372**; and**

**c. After July 1, 2021, possess an appropriate ASAM Level of Care Certification in accordance with The ASAM Criteria**.

9. A BHSO III may provide residential services for substance use disorders, if provided by:

a. An approved behavioral health practitioner, as limited by subsections **(1)[(2)]** and **(3)[(5)]** of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsections **(1)[(2)]** and **(3)[(5)]** of this section.

10. Support services for residential services for substance use disorders may be provided by a peer support specialist under the supervision of an approved behavioral health practitioner.

(o)1. Screening, brief intervention, and referral to treatment for a substance use disorder shall:

a. Be provided face-to-face or via telehealth as appropriate according to 907 KAR 3:170;

b. Be an evidence-based early intervention approach for an individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; and

c. Consist of:

(i) Using a standardized screening tool to assess an individual for risky substance use behavior;

(ii) Engaging a recipient, who demonstrates risky substance use behavior, in a short conversation and providing feedback and advice; and

(iii) Referring a recipient to additional substance use disorder or co-occurring disorder services if the recipient is determined to need additional services to address substance use.

2. A screening and brief intervention that does not meet criteria for referral to treatment may be subject to coverage by the

department.

3. A screening, brief intervention, and referral to treatment for a substance use disorder shall be provided by:

a. An approved behavioral health practitioner, as limited by subsections **(1)[(2)]** and **(3)[(5)]** this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsections **(1)[(2)]** and **(3)[(5)]** of this section.

(p)1. Withdrawal management services shall:

a. Be provided face-to-face for recipients with a substance use disorder or co-occurring disorders;

b. Be incorporated into a recipient's care as appropriate according to the continuum of care described in the most current version of The ASAM Criteria;

c. Be in accordance with the most current version of The ASAM Criteria for withdrawal management levels in an outpatient setting;

d. If provided in an outpatient setting, comply with 908 KAR 1:374, Section 2; and

e. If provided in a substance use disorder residential program, comply with 908 KAR 1:372, Section 2.

2. A recipient who is receiving withdrawal management services shall:

a. Meet the most current edition of diagnostic criteria for substance withdrawal management found in the Diagnostic and Statistical Manual of Mental Disorders; and

b. Meet the current dimensional admissions criteria for withdrawal management level of care as found in The ASAM Criteria.

3. Withdrawal management services shall be provided by:

a. A physician;

b. A psychiatrist;

c. A physician assistant;

d. An advanced practice registered nurse; or

e. Any other approved behavioral health practitioner with oversight by a physician, advanced practice registered nurse, or a physician assistant, as limited by subsections **(1)[(2)]** and **(3)[(5)]** of this section.

(q)1. Medication assisted treatment services shall be provided by an authorized prescribing provider who:

a.(i) Is a physician licensed to practice medicine under KRS Chapter 311; or

(ii) Is an advanced practice registered nurse (APRN);

b. Meets standards in accordance with 201 KAR 9:270 or 201 KAR 20:065;

c. Maintains a current waiver under 21 U.S.C. 823(g)(2) to prescribe buprenorphine products; and

d. Has experience and knowledge in addiction medicine.

2. Medication assisted treatment with behavioral health therapies shall:

a. Be co-located within the same practicing site or via telehealth as appropriate according to 907 KAR 3:170 as the practitioner with a waiver pursuant to subparagraph 1.c. of this paragraph; or

b. Be conducted with agreements in place for linkage to appropriate behavioral health treatment providers who specialize in substance use disorders and are knowledgeable in biopsychosocial dimensions of alcohol or other substance use disorder, such as:

(i) An approved behavioral health practitioner, as limited by subsections **(1)[(2)]** and **(3)[(5)]** of this section; or

(ii) A multi-specialty group or behavioral health provider group pursuant to 907 KAR 15:010.

3. Medication assisted treatment may be provided in:

a. An outpatient behavioral health setting, including in a narcotic treatment program for substance use disorder treatment with methadone operating in accordance with 908 KAR 1:374, Section 7; or

b. A residential treatment program for substance use disorders. If a residential treatment program for substance use disorders does not offer medication assisted treatment on-site, care coordination shall be provided to facilitate medication assisted treatment off-site if necessary by recipient choice. ***If the choice of medication in medication assisted treatment is methadone, the residential treatment provider shall establish a contractual relationship with a narcotic treatment program that dispenses methadone.***

4. A medication assisted treatment program shall:

a. Assess the need for treatment including:

(i) A full patient history to determine the severity of the patient's substance use disorder; and (ii) Identifying and addressing any underlying or co-occurring diseases or conditions, as necessary;

b. Educate the patient about how the medication works, including:

(i) The associated risks and benefits; and

(ii) Overdose prevention;

c. Evaluate the need for medically managed withdrawal from substances;

d. Refer patients for higher levels of care if necessary; and

e. Obtain informed consent prior to integrating pharmacologic or nonpharmacologic therapies.

5. Medication assisted treatment shall be provided by:

a. A physician;

b. A psychiatrist; or

c. An advanced practice registered nurse.

6.a. Notwithstanding any other provision of 907 KAR Chapter 15 to the contrary, temporary licensure shall be permissible for a certified alcohol and drug counselor practicing within a narcotic treatment program.

b. A temporarily certified alcohol and drug counselor practicing within a narcotic treatment program shall be under the direct supervision of a licensed clinical alcohol and drug counselor.

c. ***[~~A temporarily certified alcohol and drug counselor pursuant to this subparagraph shall provide only the following services:~~***

***~~(i) Individual counseling;~~***

***~~(ii) Group counseling; and~~***

***~~(iii) Targeted case management pursuant to 907 KAR 15:040 and 907 KAR 15:050.~~***

***~~d.~~]***(i) The provisions of this subparagraph shall no longer be operational ***three (3)[~~two (2)~~]*** years after this administrative regulation becomes effective.

(ii) After the ***three (3)[~~two (2)~~]*** year period has lapsed, an individual performing temporarily licensed certified alcohol and drug counselor duties***[~~as specified in clause c. of this subparagraph~~]*** shall possess an appropriate license to perform those duties.

(r)1. Partial hospitalization services shall be:

a. Short-term with an average of four (4) to six (6) weeks,

b. Less than twenty-four (24) hours each day;**[~~and~~]**

c. An intensive treatment program for an individual who is experiencing significant impairment to daily functioning due to a substance use disorder or co-occurring disorders**; and**

**d. Provided face-to-face**.

2. Partial hospitalization may be provided to an adult or a minor.

3. Admission criteria for partial hospitalization shall be based on an inability of community-based therapies or intensive outpatient services to adequately treat the recipient.

4. A partial hospitalization program shall meet the service criteria, including the components for support systems, staffing, and therapies outlined in the most current edition of The ASAM Criteria for partial hospitalization level of care services.

5. A partial hospitalization program shall consist of:

a. Individual outpatient therapy;

b. Group outpatient therapy;

c. Family outpatient therapy; or

d. Medication management.

6. The department shall not reimburse for educational, vocational, or job training services
provided as part of partial hospitalization.

7.a. A behavioral health services organization's partial hospitalization program shall have an agreement with the local educational authority to come into the program to provide all educational components and instruction that are not Medicaid billable or reimbursable.

b. Services in a Medicaid eligible child's individualized education program shall be coverable under Medicaid.

8. Partial hospitalization shall be:

a. Provided for at least four (4) hours per day; and

b. Focused on one (1) primary presenting problem.

9. A partial hospitalization program operated by a behavioral health services organization shall:

a. Include the following personnel for the purpose of providing medical care:

(i) An advanced practice registered nurse, a physician assistant, or a physician available on site; and

(ii) A board-certified or board-eligible psychiatrist available for consultation; and

b. Have the capacity to:

(i) Provide services utilizing a recognized intervention protocol based on nationally accepted
treatment principles;

(ii) Employ required practitioners and coordinate service provision among rendering practitioners; and

(iii) Provide the full range of services included in the scope of partial hospitalization established in this paragraph.

**(6)[~~(8)~~]**(a)***[~~Limited~~]*** Laboratory services shall be reimbursable in accordance with 907 KAR 1:028 if provided by a BHSO II or a BHSO III if:

1. The BHSO II or BHSO III has the appropriate CLIA certificate to perform laboratory testing pursuant to 907 KAR 1:028; and

2. The services are prescribed by a physician, advanced practice registered nurse, or physician assistant who has a contractual relationship with the BHSO II or BHSO III.

(b)***[~~Limited~~]*** Laboratory services shall be administered, as appropriate, by:

1. An approved behavioral health practitioner, as limited by subsections **(1)[~~(2)~~]** and **(3)[~~(5)~~]** of this section; or

2. An approved behavioral health practitioner under supervision, as limited by subsections **(1)[~~(2)~~]** and **(3)[~~(5)~~]** of this section.

Section 4. Additional Limits and Non-covered Services or Activities. (1)(a) Except as established in paragraph (b) of this subsection, unless a diagnosis is made and documented in the recipient's medical record within three (3) visits, the service shall not be covered.

(b) The requirement established in paragraph (a) of this subsection shall not apply to:

1. Mobile crisis services;

2. Crisis intervention;

3. A screening;

4. An assessment; or

5. Peer support services for the engagement into substance use disorder treatment within an emergency department bridge clinic.

(2) For a recipient who is receiving residential services for a substance use disorder, the following shall not be billed or reimbursed for the same date of service for the recipient:

(a) A screening;

(b) An assessment;

(c) Service planning;

(d) A psychiatric service;

(e) Individual outpatient therapy;

(f) Group outpatient therapy;

(g) Family outpatient therapy; or

(h) Peer support services.

(3) For a recipient who is receiving assertive community treatment for non-substance use disorder treatment pursuant to 907 KAR 15:020, the following shall not be billed or reimbursed for the same date of service for the recipient:

(a) An assessment;

(b) Case management;

(c) Individual outpatient therapy;

(d) Group outpatient therapy;

(e) Peer support services; or

(f) Mobile crisis services.

(4) The department shall not reimburse for both a screening and a screening, brief intervention, and referral to treatment provided to a recipient on the same date of service.

(5) The following services or activities shall not be covered under this administrative regulation:

(a) A service provided to:

1. A resident of:

a. A nursing facility; or

b. An intermediate care facility for individuals with an intellectual disability;

2. An inmate of a federal, local, or state:

a. Jail;

b. Detention center; or

c. Prison; or

3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;

(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the behavioral health services organization;

(c) A consultation or educational service provided to a recipient or to others;

(d) A telephone call, an email, a text message, or other electronic contact that is not **["]**face-to-face**["]**, unless permitted as a telehealth service pursuant to 907 KAR 3:170 and this administrative regulation;

(e) Travel time;

(f) A field trip;

(g) A recreational activity;

(h) A social activity; or

(i) A physical exercise activity group.

(6)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except as established in Section **3(5)(m)1.[~~3(7)(l)1.~~]** of this administrative regulation.

(b) A third party contract shall not be covered under this administrative regulation.

(7) A billing supervisor arrangement between a billing supervisor and an approved behavioral health practitioner under supervision shall not violate the supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the approved behavioral health practitioner under supervision.

Section 5. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a behavioral health services organization.

Section 6. Records Maintenance, Documentation, Protection, and Security. (1) A behavioral health services organization shall maintain a current health record for each recipient.

(2) A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(3) A health record shall:

(a) Include:

1. An identification and intake record including:

a. Name;

b. Social Security number;

c. Date of intake;

d. Home (legal) address;

e. Health insurance or Medicaid information;

f. Referral source and address of referral source;

g. Primary care physician and address;

h. The reason the individual is seeking help including the presenting problem and diagnosis;

i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The physical health provider; and

j. The name of the informant and any other information

deemed necessary by the behavioral health services organization to comply with the requirements of:

(i) This administrative regulation;

(ii) The behavioral health services organization's licensure board;

(iii) State law; or

(iv) Federal law;

2. Documentation of the:

a. Screening;

b. Assessment if an assessment was performed; and

c. Disposition if a disposition was performed;

3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services; and

(b) Be:

1. Maintained in an organized central file;

2. Furnished to the:

a. Cabinet for Health and Family Services upon request; or

b. Managed care organization in which the recipient is enrolled upon request if the recipient is enrolled with a managed care organization;

3. Made available for inspection and copying by:

a. Cabinet for Health and Family Services' personnel; or

b. Personnel of the managed care organization in which the recipient is enrolled if the recipient is enrolled with a managed care organization;

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient received services beyond a screening.

(4) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(5)(a) A behavioral health services organization's service notes regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit;

2. Indicate if the service was provided face-to-face or via telehealth; and

3. Describe the:

a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

b. Therapist's intervention;

c. Changes in the plan of care if changes are made; and

d. Need for continued treatment if continued treatment is needed.

(b)1. Any edit to notes shall:

a. Clearly display the changes; and

b. Be initialed and dated by the person who edited the notes.

2. Notes shall not be erased or illegibly marked out.

(c)1. Notes recorded by an approved behavioral health practitioner under supervision shall be co-signed and dated by the supervising professional within thirty (30) days.

2. If services are provided by an approved behavioral health practitioner under supervision, there shall be a monthly supervisory note recorded by the supervising professional reflecting consultations with the approved behavioral health practitioner under supervision concerning the:

a. Case; and

b. Supervising professional's evaluation of the services being provided to the recipient.

(6) Immediately following a screening of a recipient, the practitioner shall perform a disposition related to:

(a) A provisional diagnosis;

(b) A referral for further consultation and disposition, if applicable; or

(c)1. If applicable, termination of services and referral to an outside source for further services; or

2. If applicable, termination of services without a referral to further services.

(7) Any change to a recipient's plan of care shall be documented, signed, and dated by the rendering practitioner and by the recipient or recipient's representative.

(8)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;

2. Be dated;

3. Be titled to indicate the service rendered;

4. State a starting and ending time for the service; and

5. Be recorded and signed by the rendering practitioner and include the professional title (for example, licensed clinical social worker) of the provider.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not covered under this administrative regulation, or other non-reimbursable contacts shall:

1. Be recorded in the notes; and

2. Not be reimbursable.

(9)(a) A termination summary shall:

1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

2. Contain a summary of the significant findings and events during the course of treatment including the:

a. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's plan of care;

b. Final diagnosis of clinical impression; and

c. Individual's condition upon termination and disposition.

(b) A health record relating to an individual who terminated from receiving services shall be fully completed within ten (10) days following termination.

(10) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(11)(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring behavioral health services organization shall, within ten (10) business days of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

1.a. The Health Insurance Portability and Accountability Act;

b. 42 U.S.C. 1320d-2 to 1320d-8; and

c. 45 C.F.R. Parts 160 and 164; or

2.a. 42 U.S.C. 290 ee-3; and

b. 42 C.F.R. Part 2.

(b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, or an acute care hospital for care or treatment, the transferring behavioral health services organization shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

1.a. The Health Insurance Portability and Accountability Act;

b. 42 U.S.C. 1320d-2 to 1320d-8; and

c. 45 C.F.R. Parts 160 and 164; or

2.a. 42 U.S.C. 290 ee-3; and

b. 42 C.F.R Part 2.

(12)(a) If a behavioral health services organization's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of an owner or deaths of owners, the health records of the behavioral health services organization shall:

1. Remain the property of the behavioral health services organization; and

2. Be subject to the retention requirements established in subsection (13) of this section.

(b) A behavioral health services organization shall have a written plan addressing how to maintain health records in the event of death of an owner or deaths of owners.

(13)(a) Except as established in paragraph (b) or (c) of this subsection, a behavioral health services organization shall

maintain a case record regarding a recipient for at least six (6) years from the date of the service or until any audit dispute or issue is resolved beyond six (6) years.

(b) After a recipient's death or discharge from services, a provider shall maintain the recipient's record for the longest of the following periods:

1. Six (6) years unless the recipient is a minor; or

2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(14)(a) A behavioral health services organization shall comply with 45 C.F.R. Part 164.

(b) All information contained in a health record shall:

1. Be treated as confidential;

2. Not be disclosed to an unauthorized individual; and

3. Be disclosed to an authorized representative of:

a. The department; or

b. Federal government.

(c)1. Upon request, a behavioral health services organization shall provide to an authorized representative of the department or federal government information requested to substantiate:

a. Staff notes detailing a service that was rendered;

b. The professional who rendered a service; and

c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department.

2. Failure to provide information required by subparagraph 1. of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 7. Medicaid Program Participation Compliance. (1) A behavioral health services organization shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a behavioral health services organization receives any duplicate payment or overpayment from the department, regardless of reason, the behavioral health services organization shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the behavioral health services organization accepts the payment:

1. The payment shall be considered payment in full;

2. A bill for the same service shall not be given to the recipient; and

3. Payment from the recipient for the same service shall not be accepted by the behavioral health services organization.

(b)1. A behavioral health services organization may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

a. Recipient requests the service; and

b. Behavioral health services organization makes the recipient aware in advance of providing the service that the:

(i) Recipient is liable for the payment; and

(ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1. of this paragraph, the:

a. Behavioral health services organization shall not bill the department for the service; and

b. Department shall not:

(i) Be liable for any part of the payment associated with the service; and

(ii) Make any payment to the behavioral health services organization regarding the service.

(4)(a) A behavioral health services organization shall attest by the behavioral health services organization's staff's or representative's signature that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;

2. Cabinet for Health and Family Services, Office of Inspector General, or its designee;

3. Kentucky Office of Attorney General or its designee;

4. Kentucky Office of the Auditor for Public Accounts or its designee; or

5. United States General Accounting Office or its designee.

(c) If a behavioral health services organization receives a request from the department to provide a claim, related information, related documentation, or record for auditing purposes, the behavioral health services organization shall provide the requested information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by a behavioral health services organization shall result in the suspension or termination of the behavioral health services organization from Medicaid Program participation.

Section 8. Third Party Liability. A behavioral health services organization shall comply with KRS 205.622.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A behavioral health services organization that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the behavioral health services organization's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the behavioral health services organization's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 10. Auditing Authority. The department shall have the authority to audit any:

(1) Claim;

(2) Medical record; or

(3) Documentation associated with any claim or medical record.

Section 11. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

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

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

Section 12. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in

accordance with 907 KAR 17:010.

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary
APPROVED BY AGENCY: October 14, 2019
FILED WITH LRC: October 15, 2019 at 8 a.m.
CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, Cabinet for Health and Family Services, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES**
**Department for Medicaid Services**
**Division of Policy and Operations**
**(As Amended at ARRS, November 12, 2019)**

**907 KAR 15:025. Reimbursement provisions and requirements regarding behavioral health services provided by behavioral health services organizations.**

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23), 18022(b)(1)(E)
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by behavioral health services organizations to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. General Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall:
(1) Meet the requirements established in 907 KAR 15:020 or 907 KAR 15:022; and
(2) Be covered in accordance with 907 KAR 15:020 or 907 KAR 15:022.

Section 2. Reimbursement. (1) One (1) unit of service shall be:
(a) Fifteen (15) minutes in length; or
(b) The unit amount identified in the corresponding:
1. Current procedural terminology code; or
2. Healthcare common procedure coding system code.
(2) The rates for covered services established pursuant to 907 KAR 15:020 and provided within a BHSO I[~~The rate per unit for a screening or for crisis intervention~~] shall be:
(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:
1. Physician; or
2. Psychiatrist;
(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:
1. An advanced practice registered nurse;[~~or~~]
2. A licensed psychologist; or
3. A physician assistant;
(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:
1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Licensed marriage and family therapist; [~~or~~]
5. Licensed professional art therapist; [~~or~~]
6. Certified psychologist with autonomous functioning; or
7. Licensed behavior analyst; ***or***
(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:
1. Marriage and family therapy associate working under the supervision of a billing supervisor;
2. Licensed professional counselor associate working under the supervision of a billing supervisor;
3. Licensed psychological associate working under the supervision of a billing supervisor;
4. Certified social worker working under the supervision of a billing supervisor;
5. Certified psychologist[~~Physician assistant working under the supervision of a billing supervisor~~]; or
6. Licensed professional art therapist associate working under the supervision of a billing supervisor[~~; or~~
~~7. Certified alcohol and drug counselor working under the supervision of a billing supervisor~~].
(3) The rates for covered services established pursuant to 907 KAR 15:022 and provided within a BHSO II[~~The rate per unit for an assessment~~] shall be:
(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:
1. Physician; or
2. Psychiatrist;
(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:
1. An advanced practice registered nurse;[~~or~~]
2. A licensed psychologist; or
3. A physician assistant;
(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:
1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Licensed marriage and family therapist;[~~or~~]
5. Licensed professional art therapist;[~~or~~]
6. Certified psychologist with autonomous functioning; or
7. Licensed clinical alcohol and drug counselor;
(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:
1. Marriage and family therapy associate working under the supervision of a billing supervisor;
2. Licensed professional counselor associate working under the supervision of a billing supervisor;
3. Licensed psychological associate working under the supervision of a billing supervisor;
4. Certified social worker working under the supervision of a billing supervisor;
5. Certified psychologist[~~Physician assistant working under the supervision of a billing supervisor~~];
6. Licensed professional art therapist associate working under the supervision of a billing supervisor; or
7. Licensed clinical alcohol and drug counselor associate; or
(e) Thirty-seven and five-tenths (37.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a certified alcohol and drug counselor[~~Licensed assistant behavior analyst working under the supervision of a billing supervisor; or~~
~~8. Certified alcohol and drug counselor working under the supervision of a billing supervisor~~].
(4) The rates for covered services established pursuant to 907 KAR 15:022 and provided within a BHSO III shall be:
(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:
1. Physician; or
2. Psychiatrist;
(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:
1. An advanced practice registered nurse;
2. A licensed psychologist; or
3. A physician assistant;
(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Licensed marriage and family therapist;
5. Licensed professional art therapist;
6. Certified psychologist with autonomous functioning; or
7. Licensed clinical alcohol and drug counselor;

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor;
2. Licensed professional counselor associate working under the supervision of a billing supervisor;
3. Licensed psychological associate working under the supervision of a billing supervisor;
4. Certified social worker working under the supervision of a billing supervisor;
5. Certified psychologist;
6. Licensed professional art therapist associate working under the supervision of a billing supervisor; or
7. Licensed clinical alcohol and drug counselor associate; or

(e) Thirty-seven and five-tenths (37.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a certified alcohol and drug counselor[~~The rate per unit for psychological testing shall be:~~

~~(a) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychologist;~~

~~(b) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychological practitioner; or~~

~~(c) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychological associate working under the supervision of a licensed psychologist.~~

~~(5) The rate per unit for individual outpatient therapy, group outpatient therapy, or collateral outpatient therapy shall be:~~

~~(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~1. Physician; or~~
~~2. Psychiatrist;~~

~~(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:~~

~~1. An advanced practice registered nurse; or~~
~~2. A licensed psychologist;~~

~~(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~1. Licensed professional clinical counselor;~~
~~2. Licensed clinical social worker;~~
~~3. Licensed psychological practitioner;~~
~~4. Licensed marriage and family therapist;~~
~~5. Licensed professional art therapist; or~~
~~6. Licensed behavior analyst; or~~

~~(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~1. Marriage and family therapy associate working under the supervision of a billing supervisor;~~
~~2. Licensed professional counselor associate working under the supervision of a billing supervisor;~~
~~3. Licensed psychological associate working under the supervision of a billing supervisor;~~
~~4. Certified social worker working under the supervision of a billing supervisor;~~
~~5. Physician assistant working under the supervision of a billing supervisor;~~
~~6. Licensed professional art therapist associate working under the supervision of a billing supervisor;~~
~~7. Licensed assistant behavior analyst working under the supervision of a billing supervisor; or~~
~~8. Certified alcohol and drug counselor working under the supervision of a billing supervisor.~~

~~(6) The rate per unit for family outpatient therapy shall be:~~

~~(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~1. Physician; or~~
~~2. Psychiatrist;~~

~~(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:~~

~~1. An advanced practice registered nurse; or~~
~~2. A licensed psychologist;~~

~~(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~1. Licensed professional clinical counselor;~~
~~2. Licensed clinical social worker;~~
~~3. Licensed psychological practitioner;~~
~~4. Licensed marriage and family therapist; or~~
~~5. Licensed professional art therapist; or~~

~~(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~1. Marriage and family therapy associate working under the supervision of a billing supervisor;~~
~~2. Licensed professional counselor associate working under the supervision of a billing supervisor;~~
~~3. Licensed psychological associate working under the supervision of a billing supervisor;~~
~~4. Certified social worker working under the supervision of a billing supervisor;~~
~~5. Physician assistant working under the supervision of a billing supervisor;~~
~~6. Licensed professional art therapist associate working under the supervision of a billing supervisor; or~~
~~7. Certified alcohol and drug counselor working under the supervision of a billing supervisor~~].

(5)(a)[~~(7)~~] Reimbursement for services provided by a BHSO I[~~the following services~~] shall be as established on the Kentucky Medicaid Behavioral Health and Substance Abuse Services Outpatient (Non-Facility)[~~BHSO Non-Medicare Services~~] Fee Schedule and this administrative regulation for those services that are eligible to be provided within a BHSO I as established pursuant to 907 KAR 15:020.

(b) Reimbursement for services provided by a BHSO II shall be as established on the Kentucky Medicaid Behavioral Health and Substance Abuse Services Outpatient (Non-Facility) Fee Schedule and this administrative regulation for those services that are eligible to be provided within a BHSO II as established pursuant to 907 KAR 15:022.

(c) Reimbursement for services provided by a BHSO III shall be as established on the Kentucky Medicaid Behavioral Health and Substance Abuse Services Facility Fee Schedule and this administrative regulation for those services that are eligible to be provided within a BHSO III as established pursuant to 907 KAR 15:022[~~:~~

~~(a) Mobile crisis services;~~
~~(b) Day treatment;~~
~~(c) Peer support services;~~
~~(d) Parent or family peer support services;~~
~~(e) Intensive outpatient program services;~~
~~(f) Service planning;~~
~~(g) Residential services for substance use disorders;~~
~~(h) Screening, brief intervention, and referral to treatment;~~
~~(i) Assertive community treatment;~~
~~(j) Comprehensive community support services; or~~
~~(k) Therapeutic rehabilitation services~~].

(6)[~~(8)~~](a) The department shall use the current version of the Kentucky-specific Medicare Physician Fee Schedule for reimbursement purposes.

(b) For example, if the Kentucky-specific Medicare Physician Fee Schedule currently published and used by the Centers for Medicare and Medicaid Services for the Medicare Program is:

1. An interim version, the department shall use the interim version until the final version has been published; or
2. A final version, the department shall use the final version.

(7)[~~(9)~~] The department shall not reimburse for a service billed

by or on behalf of an entity or individual that is not a billing provider.

Section 3. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a behavioral health services organization.

Section 4. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

(1)(a) 907 KAR 15:020; or

(b) 907 KAR 15:022; and

(2) This administrative regulation.

Section 5. 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 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Medicaid Behavioral Health and Substance Abuse Services Outpatient (Non-Facility) Fee Schedule", July 2019; and

(b) "Kentucky Medicaid Behavioral Health and Substance Abuse Services Facility Fee Schedule", July 2019[~~"BHSO Non-Medicare Services Fee Schedule", July 2014, is incorporated by reference~~].

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

(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at https://chfs.ky.gov/agencies/dms/Pages/***feesrates[regsmaterials]***.aspx[~~http://www.chfs.ky.gov/dms/incorporated.htm~~].

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 6, 2019

FILED WITH LRC: June 28, 2019 at 4 p.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

## ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

**NONE**

## PROPOSED AMENDMENTS

**COUNCIL ON POSTSECONDARY EDUCATION**
**(Amendment)**

**13 KAR 4:010. State Authorization Reciprocity Agreement.**

RELATES TO: KRS 164.020(23),164.945, 164.946, 164.947, 164.992, 165A.320-165A.450

STATUTORY AUTHORITY: KRS 164.540(3)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.540(3) authorizes the Council on Postsecondary Education to promulgate an administrative regulation to enter into the State Authorization Reciprocity Agreement, which establishes uniform national standards for interstate offerings of postsecondary distance education and authorizes postsecondary educational institutions meeting those standards located in member states or territories to provide distance education to residents of other member states. KRS 164.540(3) also authorizes the council to serve as the lead or portal agency on behalf of the Commonwealth's public and private postsecondary institutions seeking to offer distance education in member states. This administrative regulation establishes the mechanism by which Kentucky institutions may join the State Authorization Reciprocity Agreement and sets forth the process by which non-resident students can file complaints against Kentucky member institutions.

Section 1. Definitions. (1) "Accredited" means holding institutional accreditation by name as a U.S.-based institution from an accreditor recognized by the U.S. Department of Education.

(2) "Commission" means the Kentucky Commission on Proprietary Education.

(3) "Council" means the Kentucky Council on Postsecondary Education.

(4) "Degree" means an award conferred at the associate level or higher by an institution as official recognition for the successful completion of a program of studies.

(5) "Institution" means a Kentucky degree-granting postsecondary entity.

(6) "NC-SARA" means the National Council for State Authorization Reciprocity Agreements.

(7) "President" means the President of the Kentucky Council on Postsecondary Education.

(8) "State Authorization Reciprocity Agreement," or "SARA," means the agreement among member states, districts, and U.S. territories that establishes comparable national standards for interstate offering of degrees through distance education and authorizes institutions meeting those standards located in member states or territories to provide distance education to residents of other member states.

Section 2. Initial Application Procedures. (1) In order to participate in SARA, an institution shall submit the following items to the president for review and action:

(a) The current NC-SARA Application and Approval Form for Institutional Participation in SARA, in electronic format; and

(b) The fees due to the Council, in accordance with Section 6 of this administrative regulation.

(2) The application referenced in subsection (1)(a) of this section may be found online at www.nc-sara.org.

Section 3. Renewal Application Procedures. (1) In order to continue participating in SARA, an institution shall submit the following items to the president for review and action at least sixty (60) days before the anniversary date of the institution's initial approval:

(a) The current NC-SARA Application for Institutional Renewal to Participate in SARA, in electronic format; and

(b) The fees due to the council, in accordance with Section 6 of this administrative regulation.

(2) The application referenced in subsection (1)(a) of this section may be found online at www.nc-sara.org.

Section 4. Standards for Approval. In order to participate in SARA, an institution shall comply with the following:

(1) Maintain authorization to operate in Kentucky through one (1) of the following:

(a) Creation by Kentucky Revised Statutes;

(b) Licensure by the council; or

(c) Licensure by the commission; and

(2) Meet the current minimum requirements to participate in SARA.

Section 5. Consumer Complaints. (1) After first exhausting the institution's internal procedure for complaint resolution, a non-resident student may file a complaint against the institution for failure to comply with any SARA standard within two (2) years of the incident about which the complaint is made.

(2) In order to be considered, a complaint shall be submitted by the student in writing and include the following information:

(a) Name, address, email address, and phone number of student;

(b) Name of institution;

(c) Location of institution;

(d) Dates of attendance;

(e) An explanation of the steps taken to exhaust the institution's grievance process;

(f) A full description of the issue and any relevant documentation supporting the complaint; and

(g) The desired resolution of the complaint.

(3) Complaints regarding student grades or student conduct violations shall not be considered.

(4) The president shall forward the complaint by email to the institution and require a written response no later than thirty (30) days from the date of transmittal.

(5) After review of information and materials provided by the student and the institution, the president may request additional information from either party.

(6) After review of all relevant information and materials, the president shall facilitate a resolution of the complaint. The relief provided the student, if any, shall be commensurate with the circumstances.

(7) Resolution of a complaint by the president shall be final, except in instances where the subject matter of the complaint may violate any other applicable laws.

(8) The president shall provide to the executive director of the commission, for reference purposes, a copy of:

(a) Any complaint initiated against an institution licensed by the commission;

(b) The resolution; and

(c) Any related materials.

Section 6. Fees. The council shall charge an initial and annual renewal fee to institutions based on all enrolled full time equivalent students, which shall be due at time of application. Applications shall not be reviewed without receipt of fee payment. Failure to pay a fee on or before the date of application shall be sufficient grounds for denial of an application. Fees shall be in addition to any fees charged by NC-SARA and shall be in accordance with the following schedule:

(1) Under 2,500 - $3,000;

(2) 2,500 – 9,999 - $5,000; or

(3) 10,000 or more - $7,000.

Section 7. Appeals.

(1) An institution denied approval for an initial or renewal application may request an appeal of that decision in accordance with the terms of this subsection.

(a) The institution shall notify the president of the intent to appeal the decision within seven (7) days of the receipt of the notice of denial.

(b) The president shall request that the Office of Administrative Hearings appoint a hearing officer who shall conduct an administrative hearing consistent with the provisions of KRS

13B.005-13B.170.

(c) The appeal shall be presented in writing no later than thirty (30) days following the receipt of notification of intent to appeal. The appeal shall be considered on the written record alone.

(d) The appeals officer shall review findings of fact, consider testimony, draw conclusions, and formulate a recommendation consistent with the facts and this administrative regulation.

(e) Upon completion, the report of the appeals officer shall be forwarded to the institution and to the president.

(f) Within thirty (30) working days of receiving the report of the appeals officer, the president shall either uphold the decision or approve the application.

SHERRILL B. ZIMMERMAN, Chair
TRAVIS POWELL, General Counsel

APPROVED BY AGENCY: November 15, 2019

FILED WITH LRC: November 15, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2019 at 10:00 a.m. EST at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601 in Conference Room A. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification 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 January 31, 2019. 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: Sarah Levy, Executive Director of Postsecondary Licensing, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 350, Frankfort, Kentucky 40601, phone 502.573.1555, fax 502.573.1535, email sarah.levy@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sarah Levy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for participation by Kentucky postsecondary institutions in the State Authorization Reciprocity Agreement (SARA), which establishes uniform national standards for interstate offerings of postsecondary distance education and authorizes postsecondary educational institutions meeting those standards located in member states or territories to provide distance education to residents of other member states.

(b) The necessity of this administrative regulation: KRS 164.540(3) provides the Council with the authority to enter into SARA on behalf of the Commonwealth and promulgate regulations to establish procedures for Kentucky postsecondary institutions to participate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation sets out the procedures for Kentucky postsecondary institutions to participate in SARA as required by KRS 164.540(3)(c).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The procedures set forth in this regulation are in conformance with SARA requirements which must be met in order for Kentucky to be a member as authorized by KRS 164.540(3).

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

(a) How the amendment will change this existing administrative regulation: This amendment adds an appeals process for institutions who are denied approval.

(b) The necessity of the amendment to this administrative regulation: SARA state participation requirements were recently amended to mandate an institutional appeal process at the state portal agency level.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes give the Council the authority to adopt provisions via regulation to meet the SARA participation requirements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow Kentucky to continue to participate in SARA as contemplated in the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public and private colleges and universities offering Associate's degrees or higher.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, 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 will be required of regulated entities unless an application is denied. If an application is denied, the institution wants to appeal the decision, it must file its appeal in accordance with the provisions set forth in the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will no additional cost of compliance related to this amendment, except the staff or outside counsel cost of filing an appeal and arguing for consideration of the decision to deny.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Institutions will be able to appeal application denials.

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

(a) Initially: The amendment will not result in any additional cost of implementation initially.

(b) On a continuing basis: The amendment will only result in additional costs to the Council if an appeal is filed. There may be cost incurred for the use of a hearing officer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SARA fees and General Fund 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: No. The amendment does not require an increase in fees.

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

(9) TIERING: Is tiering applied? No, the amendment does not apply any tiering as all regulated entities will be treated identically in its application.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Council is responsible for implementation, and this regulation applies to Kentucky public institutions and private colleges and universities that seek to become members of SARA.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.540(3)(c).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue from SARA fees is approximately $170,000 annually.

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See 3(a).

(c) How much will it cost to administer this program for the first year? About $87,500

(d) How much will it cost to administer this program for subsequent years? Approximately $175,000

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: N/A

**PERSONNEL CABINET**
**(Amendment)**

**101 KAR 2:120. Incentive programs.**

RELATES TO: KRS 18A.202, 199.555(1)

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(d), 18A.202(1), EO 2019-787

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(d) requires the Secretary of Personnel to promulgate administrative regulations to implement work-related incentive programs for state employees. KRS 18A.202 authorizes the secretary to establish work-related incentive programs for state employees. Executive Order 2019-787 authorizes the secretary to promulgate administrative regulations for state employee adoption benefits. This administrative regulation establishes the requirements for an employee suggestion system incentive program and a state employee adoption benefit program.

Section 1. Employee Suggestion System. (1) Eligibility.

(a) An employee with status in the classified service or an employee governed by KRS Chapter 16 may be recognized and rewarded for submitting a suggestion that results in the improvement of state service or in the realization of financial savings by the state.

(b) A suggestion shall be a positive idea which:

1. Explains how to improve methods, equipment, or procedures;

2. Reduces time or cost of a work operation;

3. Creates a safer work environment;

4. Increases revenue; or

5. Improves relationships with or services for the public.

(2) Administration.

(a) The secretary shall establish and maintain standard operating procedures to administer the Employee Suggestion System.

(b) Before January 1 of each calendar year, each cabinet or agency head shall appoint, in writing, an employee suggestion coordinator.

(c) Once an employee submits a suggestion to his or her cabinet or agency, the coordinator shall review the request to ensure it meets the above eligibility requirements and the requirements set forth in the standard operating procedures.

(d) If the suggestion meets eligibility and procedural requirements, the request shall be forwarded for review and approval as follows:

1. To the coordinator of the affected agency, which is the agency implementing the suggestion, if applicable;

2. To a designated evaluator in the affected agency, who shall be a person with expertise in the area under consideration. The evaluator shall review the suggestion to determine whether the suggestion shall be implemented;

3. To a budget representative in the affected agency, who shall determine if sufficient funds are available to fund the award; and

4. To the appointing authority or his or her designee of the affected agency.

(e) The decision of the appointing authority or his or her designee shall be final, except as provided by subsection (4) of this section.

(f) Upon approval and implementation of the employee's suggestion, the agency that implemented the suggestion shall provide notice of the approval and implementation to the suggester's agency coordinator, to include total cash savings. If cash savings is unknown at the time of implementation, the affected agency shall provide documentation of cash savings within one (1) year and one (1) month of the implementation date to the suggester's agency coordinator.

(3) General provisions.

(a) A suggestion shall be eligible for an award only after legislative action or administrative regulation changes, if required, have been completed which shall be the responsibility of the agency that desires to implement the suggestion.

(b) The following suggestions shall not be eligible for a cash award:

1. A suggestion that falls within the scope of the duties of the suggester. "Scope of duties" shall include a specific set of tasks assigned to the suggester or set forth in the position description or job specification of the suggester upon submission of the suggestion;

2. A suggestion which includes a proposal to perform routine maintenance operations or follow manufacturer's recommendations;

3. A suggestion to make a change which has been documented in writing as already under consideration by those administratively responsible;

4. A suggestion which corrects an error or condition that exists because established procedures were not followed; or

5. A suggestion made by a coordinator.

(c) If more than one (1) suggester makes significant contributions to the idea, the suggestion may be submitted jointly, and an award granted shall be divided equally between or among the suggesters.

(d) 1. The first suggestion received shall take precedence over all future suggestions having the same purpose.

2. If two (2) or more similar suggestions are received on the same day, an award granted shall be divided equally between or among the suggesters.

(e) The suggester shall be notified in writing of the status of the suggestion within ninety (90) calendar days of receipt by the suggester's agency coordinator and every sixty (60) days thereafter.

(f) A suggestion shall be considered to be active and eligible for an award until the suggester is notified in writing that the suggestion has been approved, denied, or closed.

(g) If the suggestion is denied or closed, the suggester's agency coordinator shall notify the suggester in writing stating the reason it was denied or closed.

(4) Reconsideration.

(a) A suggester may request reconsideration of a suggestion that has not received approval from the cabinet or agency.

(b)1. The suggester shall request reconsideration in writing and shall set forth the basis for the request.

2. a. The request shall be filed with the suggester's agency coordinator within thirty (30) calendar days of the date that written notice of denial is provided to the suggester.

b. If the thirtieth day falls on a day that the cabinet or agency office is closed during regular work hours, the request may be filed on the next work day.

(c) Within thirty (30) calendar days, the cabinet or agency shall act on the request for reconsideration and notify the suggester in writing of the reason for the decision.

(d) If an eligible suggestion is denied or closed and conditions under which it was originally considered have changed, the suggester may resubmit the suggestion.

(5) Payment.

(a) An award of cash payment shall be in accordance with KRS 18A.202.

1. The cash payment shall be calculated based upon the amount saved over the period of one (1) year minus implementation costs.

2. a. The payment for the award shall be issued by the Personnel Cabinet.

b. Funds for payment shall come from the agency or agencies

implementing the suggestion, if sufficient funds are available to fund the award.

c. If applicable, the funding agency may interaccount other agencies implementing the suggestion for a proportionate share of the total award amount.

(b) 1. If a suggestion has been approved by the appointing authority or his or her designee and has resulted in a financial savings to the state, the suggester shall be compensated in an amount of ten (10) percent of the amount saved over the twelve (12) month period following implementation of the suggestion, with a minimum of $100 and a maximum of $2,500.

2. If a suggestion approved by the appointing authority or his or her designee results in an intangible improvement in state service, the suggester shall be compensated in the amount of $100.

3. Upon the suggester's receipt of compensation, the suggestion shall become the property of the state [~~Administration. An employee with status in the classified service or an employee governed by KRS Chapter 16 may be recognized and rewarded for submitting a suggestion that results in the improvement of state service or in the realization of financial savings by the state.~~

~~(a)1. The employee suggestion system council, headed by the chairperson designated by the Secretary of Personnel, shall:~~

~~a. Ensure proper evaluation of each suggestion;~~

~~b. Review and act upon, by approval or denial, a suggestion presented to the council by a cabinet or agency; and~~

~~c. Reconsider denials as set forth in subsection (4) of this section.~~

~~2. A designated coordinator may present recommended suggestions to the council and request that the council vote on suggestions.~~

~~3. The council may defer action for up to one (1) year and one (1) month pending documentation of cash savings.~~

~~4. The council shall receive administrative support from the Personnel Cabinet.~~

~~5. The council shall prepare an annual report to be submitted to the Secretary of Personnel that shall include the number of suggestions received and the status of each suggestion.~~

~~6. The council shall meet:~~

~~a. At a minimum on a quarterly basis; or~~

~~b. Upon the request of the council chairperson or a majority of the coordinators.~~

~~(b) Each cabinet secretary or agency head shall designate, in writing, the appointment of a coordinator who shall also serve on the council. The coordinator shall receive suggestions and establish and maintain internal procedures to ensure appropriate evaluation of suggestions.~~

~~(c) The coordinator shall present suggestions recommended for approval by the cabinet or agency to the council for consideration.~~

~~(2) Eligibility.~~

~~(a) A suggestion shall be a positive idea which:~~

~~1. Explains how to improve methods, equipment or procedures;~~

~~2. Reduces time or cost of a work operation;~~

~~3. Creates a safer work environment;~~

~~4. Increases revenue; or~~

~~5. Improves relationships with or services for the public.~~

~~(b) The suggestion shall:~~

~~1. Present an improvement in state service or function;~~

~~2. Explain how the change would be accomplished;~~

~~3. Define what benefits would be realized by the state, particularly in terms of efficiency, effectiveness, safety, economy, conservation of energy resources, or public relations;~~

~~4.a. Be made by an employee to the employee's cabinet or agency; or~~

~~b. Be forwarded from other coordinators if the suggestion affects the coordinator's agency;~~

~~5. Within ninety (90) working days of implementation by the agency, be:~~

~~a. Submitted on the Employee Suggestion Form, P-35; and~~

~~b. Accompanied by exhibits or illustrations as needed;~~

~~6. Be practical, useful, and constructive; and~~

~~7. Be eligible for an award only after legislative action or administrative regulation changes, if required, have been completed which shall be the responsibility of the agency that desires to implement the suggestion.~~

~~(c) The following suggestions shall not be eligible for a cash award:~~

~~1. A suggestion that falls within the scope of the duties of the suggester and which the suggester has the authority to initiate or implement without other administrative approval. "Scope of duties" shall include a specific set of tasks as set forth in the position description of the suggester upon submission of the suggestion;~~

~~2. A suggestion related to a particular problem given to an employee to solve within the scope of the employee's duties and responsibilities;~~

~~3. A suggestion made by a member of the council, a cabinet, or agency suggestion review committee;~~

~~4. A suggestion which includes a proposal to perform routine maintenance operations or follow manufacturer's recommendations;~~

~~5. A suggestion to make a change which has been documented in writing as already under consideration by those administratively responsible; or~~

~~6. A suggestion which corrects an error or condition that exists because established procedures were not followed.~~

~~(d) If more than one (1) suggester makes significant contributions to the idea, the suggestion may be submitted jointly, and an award granted shall be divided equally between or among the suggesters.~~

~~(e)1. The first suggestion received shall take precedence over all future suggestions having the same purpose.~~

~~2. If two (2) or more similar suggestions are received on the same day, an award granted shall be divided equally between or among the suggesters.~~

~~(f) A suggestion shall be considered a confidential communication among the suggesters and the employees and officers whose responsibility it is to process, investigate, review, or evaluate suggestions.~~

~~(3) General provisions.~~

~~(a) The cabinet or agency head shall establish an internal system for receipt, evaluation, and reconsideration of employee suggestions. This system shall, at a minimum, include the following:~~

~~1. A method to notify the suggester in writing that the suggestion has been received and to notify the suggester in writing of a change in the status of the suggestion;~~

~~2. A method to document the original suggestion, evaluation, and action taken; and~~

~~3. A method to prepare and present documentation of a suggestion for recommendation to the council.~~

~~(b)1. Eligibility of a suggestion shall be evaluated according to the circumstances existing upon submission of the suggestion.~~

~~2. An evaluation shall be completed by a person with expertise in the area under consideration.~~

~~3. The results of the evaluation shall be recorded on the Evaluation of Employee Suggestion Form, Form P-36, and the form shall be dated and signed by the individual making the evaluation.~~

~~(c)1. The suggester shall be notified in writing of the disposition of the suggestion within ninety-five (95) calendar days of receipt by the coordinator.~~

~~2. If all parties involved agree, an extension of time shall be granted if extenuating circumstances exist.~~

~~3. A suggestion shall be considered to be active and eligible for an award until the suggester is notified in writing that the suggestion has been approved or denied.~~

~~4. If a suggestion will not be implemented, the coordinator shall notify the suggester in writing stating the reason it was not implemented.~~

~~5.a. If an eligible suggestion is not adopted and conditions under which it was originally considered have changed, the suggester may request reevaluation by the cabinet or agency.~~

~~b. The request shall:~~

~~(i) Be in writing;~~

~~(ii) Be evaluated by the next level of supervision;~~

~~(iii) Be received by the agency within one (1) year from the date of rejection; and~~

~~(iv) Include information regarding the change in conditions.~~

~~(d) If a suggestion is approved and implemented by the cabinet or agency, the suggester's coordinator shall recommend approval of the suggestion to the council.~~

~~1. The recommendation shall contain:~~

~~a. The suggestion as completed by the suggester on the Employee Suggestion Form, P-35;~~

~~b. The evaluation forms completed according to the criteria set forth in this administrative regulation; and~~

~~c. A statement of actual or projected cost savings using generally accepted accounting principles.~~

~~2. Upon receipt of the council's decision, the chairperson of the council shall send written notification of the council's action to the suggester's coordinator and the coordinator shall then provide written notification to the suggester regarding the decision.~~

~~3. If an eligible suggestion is denied by the council, the suggestion shall remain on active file with the council for a period of one (1) year from the date of denial.~~

~~(e) Award of cash payment shall be in accordance with KRS 18A.202.~~

~~1. The cash payment shall be calculated based upon the amount saved over the period of one (1) year minus implementation costs and shall be determined according to generally accepted accounting principles.~~

~~2.a. The award check shall be issued by the agency where the suggester is employed.~~

~~b. Funds for payment shall come from the agency or agencies implementing the suggestion.~~

~~c. If applicable the agency issuing the check may interaccount other agencies implementing the suggestion for a proportionate share of the total award amount.~~

~~3.a. If a suggestion may result in financial savings to the state and proper documentation of cost savings has not yet been obtained, the council shall request that each agency implementing the suggestion maintain records which document the cost savings for a period not to exceed one (1) year from the date of implementation.~~

~~b. Documentation shall be conducted according to generally accepted accounting principles.~~

~~c. This cost savings analysis shall be forwarded by the coordinator to the council chairperson within thirty (30) work days of completion of the analysis.~~

~~(f)1. If a suggestion has been approved by the council and has resulted in a financial savings to the state, the suggester shall be compensated in an amount of ten (10) percent of the amount saved over one (1) calendar year, with a minimum of $100 and a maximum of $2,500.~~

~~2. If a suggestion approved by the council results in an intangible improvement in state service, the suggester shall be compensated in the amount of $100.~~

~~3. Upon the suggester's receipt of compensation, the suggestion shall become the property of the state.~~

~~(4) Reconsideration.~~

~~(a) A suggester may request reconsideration of a suggestion that has not received approval from the cabinet or agency within ten (10) work days of the date that written notice of denial is received by the suggester.~~

~~(b)1. The suggester shall request reconsideration in writing and shall set forth the basis for the request.~~

~~2.a. The request shall be filed with the coordinator within ten (10) days of the date of the denial.~~

~~b. If the tenth day falls on a day that the cabinet or agency office is closed during regular work hours, the request may be filed on the next work day.~~

~~(c) Within thirty (30) work days, the cabinet or agency shall act on the request for reconsideration and notify the suggester in writing of the reason for the decision.~~

~~(5) Council review.~~

~~(a)1. A suggestion may be reviewed by the council on its own motion, or upon request of the suggester.~~

~~2. If a suggestion has been reconsidered and denied by the cabinet or agency, the suggester may request a review by the council.~~

~~a. The suggester shall request review within thirty (30) days of receipt of the written notification of the outcome of the reconsideration and shall set forth in writing the basis for the request.~~

~~b. (i) The request shall be filed in the office of the employee suggestion system chairperson within the thirty (30) day period.~~

~~(ii) If the 30th day falls on a day that the chairperson's office is closed during regular work hours, the request may be filed on the next work day.~~

~~(b) The council shall complete the review within ninety (90) calendar days of the date that the chairperson receives the request for review.~~

~~(c) The council chairperson shall notify the agency head of the council's findings and its recommendation concerning the suggestion's implementation or denial~~].

Section 2. Adoption Benefit Program. (1)(a) A state employee who finalizes a legal adoption procedure for the adoption of a child, other than the child of a spouse, between November 1, 1998 and October 21, 2019 [~~on or after November 1, 1998~~], shall be eligible to receive reimbursement for direct [~~actual~~] costs associated with the adoption of a special needs child, as defined by KRS 199.555(1), or any other child.

(b) The eligible employee shall receive:

1. Up to $5,000 in unreimbursed direct costs related to the adoption of a special needs child; or

2. Up to $3,000 in unreimbursed direct costs related to the adoption of any other child.

(2) (a) A state employee who finalized a legal adoption procedure for the adoption of a child, other than the child of a spouse, on or after October 22, 2019, shall be eligible to receive reimbursement of direct costs associated with the adoption of a child.

(b) In addition to or instead of reimbursement of direct costs, a state employee may request and receive a stipend.

(c) The combined total of stipend and reimbursement of direct costs per adoption of a special needs child shall not exceed $7,000.

(d) The combined total of stipend and reimbursement of direct costs per adoption of every other child shall not exceed $5,000[~~Total state funds for this program shall not exceed $150,000 in a fiscal year.~~

~~(2) The eligible employee shall receive:~~

~~(a) Up to $5,000 in unreimbursed direct costs related to the adoption of a special needs child; or~~

~~(b) Up to $3,000 in unreimbursed direct costs related to the adoption of any other child~~].

(3) Unreimbursed direct costs related to the adoption of a special needs child or other child shall include:

(a) Licensed adoption agency fees;

(b) Legal fees;

(c) Medical costs not paid by insurance, Medicaid, or other available resources;

(d) Court costs; and

(e) Other fees or costs associated with child adoption in accordance with state and federal law [~~and after review and approval by the court at the finalization of the adoption~~].

(4) Application for financial assistance shall be made [~~by submitting a completed State Employee Adoption Assistance Application~~] to the Secretary of Personnel along with documentary evidence of:

(a) Finalization of the adoption;

(b) Certification by the Secretary of the Cabinet for Health and Family Services that the adopted child is a special needs child, if assistance [~~reimbursement~~] for special needs adoption is sought; and

(c) A copy of an affidavit of expenses with supporting documentation related to the adoption [~~filed with and approved by the court at the finalization of the adoption~~].

(5) If both adoptive parents are [~~executive branch~~] state employees, the application for financial assistance shall be made jointly and the amount of reimbursement of costs and stipend shall be limited to that specified in subsections (1) and [~~subsection~~] (2) of this section.

(6) Upon approval of the application for financial assistance, if

sufficient funds are available, the employee's agency shall dispense funds in the amount authorized by the Secretary of Personnel.[~~Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Employee Suggestion Form", P-35, October 2007;~~

~~(b) "Evaluation of Employee Suggestion Form" Form, P-36, February 2010; and~~

~~(c) "State Employee Adoption Assistance Application", May 2015.~~

~~(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.~~]

THOMAS B. STEPHENS, Secretary, Personnel Cabinet

APPROVED BY AGENCY: October 21, 2019

FILED WITH LRC: October 22, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2020 at 10:00 a.m. at 501 High Street, 3rd floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on January 31, 2020. 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 requirements for an employee suggestion system incentive program and a state employee adoption benefit program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions and requirements for the various types of incentive programs for state employees.

(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(1)(d) requires the secretary to promulgate administrative regulations for the classified service governing incentive programs. KRS 18A.202 authorizes the secretary to implement incentive programs for state employees by administrative regulation. Executive Order 2019-787 authorizes the secretary to promulgate administrative regulations for state employee adoption benefits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes provisions and requirements for an employee suggestion system incentive program and a state employee adoption benefit 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 employee suggestion section is amended to streamline program administration. The suggestion system council is eliminated in favor of deference to the appointing authority and budget representative for the agency benefitting from a suggestion. Eligibility and award amounts are unchanged.

The adoption benefit section is amended to increase reimbursement of direct costs and stipend not to exceed $7000 for adoption of a special needs child, and an amount not to exceed $5000 for adoption of every other child. Previous benefit amounts were limited to reimbursement of expenses not to exceed $5000 and $3000.

Finally, this administrative regulation is amended to remove forms incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to streamline administration of the employee suggestion system and implement enhancements to the adoption benefit program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is consistent with authority provided in KRS 18A.030(2), 18A.110(1)(d), 18A.202(1), and EO 2019-787.

(d) How the amendment will assist in the effective administration of the statutes: This amendment streamlines administration of the employee suggestion system and implements enhancements to the adoption benefit program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All executive branch employees and their agencies are affected by the adoption benefit program provisions of the regulation, while only KRS Chapter 18A employees and KRS Chapter 16 employees are affected by the employee suggestion system incentive program provisions.

(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.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): For the adoption benefit program, the monetary benefit to eligible employees, borne by their employing agencies, will increase by a maximum of $2000 per adoption.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): For the adoption benefit program, the monetary benefit to eligible employees will increase by a maximum of $2000 per adoption.

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

(a) Initially: There are minimal additional costs anticipated to administer the amendments to this regulation. For the adoption benefit program, the monetary benefit to eligible employees will increase by a maximum of $2000 per adoption.

(b) On a continuing basis: There are minimal additional costs anticipated to administer the amendments to this regulation. For the adoption benefit program, the monetary benefit to eligible employees will increase by a maximum of $2000 per adoption.

(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 for the employee suggestion system. Existing agency funds are used for adoption benefits.

(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 established any fees or directly or indirectly increased 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 NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State executive branch agencies are subject to provisions of this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2), 18A.110(1)(d), 18A.202(1), and EO 2019-787

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? There are minimal additional costs anticipated to administer the amendments to this regulation. For the adoption benefit program, the monetary benefit to eligible employees will increase by a maximum of $2000 per adoption.

(d) How much will it cost to administer this program for subsequent years? There are minimal additional costs anticipated to administer the amendments to this regulation. For the adoption benefit program, the monetary benefit to eligible employees will increase by a maximum of $2000 per adoption.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET**
**Department of Revenue**
**(Amendment)**

**103 KAR 26:080. Dentists and dental laboratories.**

RELATES TO: KRS 139.010

STATUTORY AUTHORITY: KRS 131.130[~~(1)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. This administrative regulation interprets[~~To interpret~~] the sales and use tax law as it applies to transactions involving dentists and dental laboratories.

Section 1. Dentists are consumers of the materials, supplies, dental laboratory products, and other tangible personal property which they use in performing their services. The tax, accordingly, shall apply[~~applies~~] to the sale of the tangible personal property to the dentist[~~them~~].

Section 2. Dental laboratories are the retailers of the plates, inlays, and any other products which they manufacture for dentists or other consumers. Tax shall apply[~~applies~~] to their entire charges for such products sold at retail regardless of whether the materials and services are separately stated.

Section 3. Repairers of a dental prosthesis shall be the consumers of the parts and materials used in its repair. Repairers of a dental prosthesis shall pay sales and use tax on the purchase of all parts and materials used in its repair. Sales and use tax shall not be due on the charge by the repairer to its customer for the dental prosthesis repair[~~Dental laboratories making repairs or replacements to dentures and other tangible personal property are the consumers of tangible personal property used to make such repairs or replacements and the tax applies at the time of the sale of such materials to them~~].

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: November 5, 2019

FILED WITH LRC: November 6, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2020, at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, 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 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 January 31, 2020. 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation interprets the sales and use tax law as it applies to transactions involving dentists and dental laboratories.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide up to date guidance on the tax treatment of transactions involving dentists and dental laboratories.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 13A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to clarify information currently contained in the regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by updating the promulgation statement within the "NECESSITY, FUNCTION, AND CONFORMITY" section, clarifying tax treatment of dental prosthesis repairs, and updating language within the body of the regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide updated and accurate information regarding guidance on the sales and use tax law as it applies to the dentists and dental laboratories.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will change this existing administrative regulation by updating the promulgation statement with the "NECESSITY, FUNCTION, AND CONFORMITY" section, adding digital property and services included in KRS 139.200 per statute, clarifying tax treatment of dental prosthetic repairs, and updating language within the body of the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All dentists and dental laboratories as well as their customers.

(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 actions are necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

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

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenues are expected to be generated by updating this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET**
**Department of Revenue**
**(Amendment)**

**103 KAR 26:120. Advertising agencies.**

RELATES TO: KRS 139.010, 139.200, 139.260, 139.270, 139.280, 139.310, 139.330

STATUTORY AUTHORITY: KRS 131.130, 139.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) and 139.710 authorize the Department of Revenue to promulgate administrative regulations for the assessment, collection, refunding, administration, and enforcement of the Kentucky tax laws. This administrative regulation establishes requirements and guidelines for the application of sales and use tax to purchases and sales of tangible personal property and digital property by advertising agencies.

Section 1. Definitions. (1) "Advertising agency" means a business engaged primarily in the professional service of developing strategy, concept, and design for the placement of advertising on radio or television stations, or in newspapers, magazines, or other media.

(2) "Advertising services" means all advertising agency activities involved in the conceptualization, development, production, and refinement of a master advertisement prior to its reproduction by the advertising agency or a third party including creative concept development, design, layout, consultation services, research, script and copy writing, art preparation, public relations, and account management services.

(3) "Master advertisement" means the original advertising material created by the advertising agency for reproduction as tangible personal property or digital property for the purpose of display or other advertising uses, such as master commercials, camera ready art, proofs, and corporate logos.

Section 2. Advertising Agencies as Consumers in Creation of Master Advertisement. (1) An advertising agency shall be the consumer of all [~~the~~]tangible personal property and digital property used in the performance of its advertising services to produce a master advertisement regardless of whether the property the agency purchases is acquired in the name or account of the advertising agency or its client. The tax shall apply to the advertising agency's purchase of:

(a) All tangible personal property or digital property for use in the performance of its advertising services, including the purchase or rental of stock photos and movie footage delivered as tangible personal property or digital property;

(b) Any materials that become a component of the master advertisement; and

(c) Any tangible personal property or digital property that is incidentally provided to the client as part of the advertising services.

(2) An advertising agency shall not claim that its purchase of tangible personal property or digital property is exempt from sales and use tax because the property is to be used in fulfilling a contract with:

(a) The federal government, state government, or political subdivision thereof;

(b) Any department, agency, or instrumentality of the federal government, state government, or political subdivision thereof; or

(c) A religious, educational, or charitable institution exempt from tax under KRS 139.495.

(3) The performance of advertising services shall not constitute manufacturing or processing production of tangible personal property or digital property for sale. Therefore, an advertising agency shall not claim that its purchase of tangible personal property or digital property used in the performance of its advertising services is exempt from sales and use tax under the:

(a) Raw material, industrial tool, and industrial supply exemption as provided in KRS 139.470(9)[~~(10)~~]; or

(b) The machinery for new and expanded industry exemption as provided in KRS 139.480(10).

(4) If acting in the capacity of a consumer, an advertising

agency shall not bill its client for tax on charges made for advertising services.

Section 3. Advertising Agencies as Retailers After Creation of Master Advertisement. (1) An advertising agency shall be a retailer of tangible personal property and digital property the advertising agency sells to its clients or to others on behalf of its clients regardless of whether the sale is at a marked-up price. This provision shall include property reproduced from a master advertisement whether the advertising agency or a third party actually reproduces the materials. This provision shall not include property described in Subsection 1 of Section 2 of this administrative regulation that the advertising agency uses in creating a master advertisement.

(2) An advertising agency engaged in business as a retailer shall:

(a) Complete a "Kentucky Tax Registration Application", Revenue Form 10A100, to register with the Department of Revenue for a retail sales and use tax permit; and

(b) Report and pay the applicable sales or use tax utilizing Revenue Form 51A102, "Sales and Use Tax Return".

(3) Taxable receipts from an advertising agency's retail sale of tangible personal property or digital property shall include all charges for services that are a part of the sale of tangible personal property and digital property including charges for:

(a) Inbound freight;

(b) Production supervision; or

(c) Print management that directly relate to the sale of particular tangible personal property.

(4) Gross receipts subject to sales tax shall not include periodic print management fees or other retainer fees not related to the sale of particular tangible personal property or digital property and paid whether or not there is a transfer of tangible personal property or digital property in a given fee period.

(5) An advertising agency may purchase tangible personal property and digital property it sells to or for its clients as a sale for resale without payment of the tax if the advertising agency:

(a) Provides [~~provides~~]to its suppliers a properly completed:

1.[~~(a)~~] Kentucky "Resale Certificate", (Revenue Form 51A105);

2.[~~(b)~~] Multistate Tax Commission (Uniform Sales and Use Tax Certificate Multijurisdiction);

3.[~~(c)~~] Streamlined Sales and Use Tax Agreement – Certificate of Exemption (Revenue Form 51A260); or

4.[~~(d)~~] Other documentation containing the information required by KRS 139.280; and

(b) Reports and pays the applicable sales or use tax on their sales of the tangible personal property, digital property, and services included in KRS 139.200 utilizing Revenue Form 51A102, "Sales and Use Tax Return".

Section 4. Joint Activities by Advertising Agencies. (1) If an advertising agency contracts with a client to provide both advertising services and the sale of tangible personal property or digital property, receipts subject to tax shall be determined by the following guidelines provided the charges for the advertising services are clearly delineated from the charges for the tangible personal property or digital property on the customer's invoice.

(a) Any transfer of tangible personal property or digital property for a consideration, other than the master advertisement and the items described in Subsection 1 of Section 2 of this administrative regulation used in the creation of the master advertisement, to a client or a third party on behalf of a client shall be considered a retail sale of tangible personal property or digital property subject to sales tax.

(b) Receipts from agency fees, service charges, or commissions exclusively for advertising services shall not be subject to sales tax, including charges for placing advertisements in print, broadcast, or other media.

(c) The amount separately stated for the tangible personal property or digital property shall not be less than the fair market value of similar property sold in a similar transaction not involving the provision of advertising services.

(2) If an advertising agency contracts with a client to provide both advertising services and the sale of tangible personal property or digital property and does not clearly delineate the charges on the customer's invoice, the total billing amount is subject to tax.

Section 5. Forms. The forms listed herein may be inspected, copied, or obtained, subject to applicable copyright law, at:

(1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601[~~40620~~];

(2) At a Kentucky Taxpayer Service Center during business hours; or

(3) On the department Web site at http://revenue.ky.gov.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: November 5, 2019

FILED WITH LRC: November 6, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2020, at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, 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 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 January 31, 2020. 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 564-9526 (phone), (502) 564-3875 (fax), email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation interprets the sales and use tax law as it applies to advertising agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide up to date guidance to advertising agencies and conform to KRS 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with the provisions of KRS 13A that require an agency to maintain the most up to date guidance and statutory references in its regulations to avoid deficiency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to clarify information currently contained in the regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by updating statutory references, providing guidance to advertising agencies on filing, and updating language within the body of the regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide updated and accurate information regarding guidance on the sales and use tax law as it applies to advertising agencies.

(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: All advertising agencies as well as their customers.

(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 actions are necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

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

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenues are expected to be generated by updating this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET**
**Department of Revenue**
**(Amendment)**

**103 KAR 27:020. Blueprints and[~~photostat~~] copies.**

RELATES TO: KRS 139.010, 139.200

STATUTORY AUTHORITY: KRS 131.130[~~(1)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. This administrative regulation interprets the sales and use tax law as it relates to the production of blueprints and other copied documents[~~To interpret the sales and use tax law as it relates to blueprints and photostat copiers~~].

Section 1. The sale of copies, stock blueprints, and products of a similar nature constitute a retail sale of tangible personal property or digital property and the tax shall apply to the total charge for such products. This treatment shall apply regardless of whether the product is produced to the special order of the customer, the product is made from materials furnished by the customer, or the product is made from materials furnished by the retailer[~~Photostat copiers, producers of blueprints and articles of a similar nature are retailers and the tax applies to the total charge for such products. This rule is applicable when the article is produced to the special order of the customer and when the article is made from materials furnished by the customer~~].

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: November 5, 2019

FILED WITH LRC: November 6, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2020, at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, 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 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 January 31, 2020. 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation interprets the sales and use tax law as it applies to copies and blueprints.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide up to date guidance on the tax treatment of copies and blueprints.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to clarify additional taxable treatments and bring the regulation more in line with modern verbiage.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to clarify information currently contained in the regulation and complies with the requirements of KRS 13A.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by updating the promulgation statement within the "NECESSITY, FUNCTION, AND CONFORMITY", clarifying applicable transactions, and updating language within the body of the regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide updated and accurate information regarding guidance on the sales and use tax law as it applies to copies and blueprints.

(c) How the amendment conforms to the content of the authorizing statutes: See (2)(a).

(d) How the amendment will assist in the effective administration of the statutes: See (2)(a).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All sellers and purchasers of copies and blueprints.

(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 actions are anticipated to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost expected to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

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

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No new revenues are expected to be generated for state or local government by updating this administrative regulation. New language is only clarifying and any fiscal impact should be minimal or nonexistent.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None known.

(c) How much will it cost to administer this program for the first year? No additional costs to the Department above current budgeted staff and resources are expected to be incurred in the first year of this regulation being in effect. These staff and resources will continue to be utilized to administer this tax, as currently administered.

(d) How much will it cost to administer this program for subsequent years? No additional costs above current expenditures are expected to be incurred in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET**
**Department of Revenue**
**(Amendment)**

**103 KAR 27:120. Photographers, photo finishers, and x-ray labs.**

RELATES TO: KRS 139.010, 139.260

STATUTORY AUTHORITY: KRS 131.130[~~(1)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. This administrative regulation interprets [~~To interpret~~]the sales and use tax law as it applies to photographers, photo finishers, and x-ray laboratories.

Section 1. Photographers. (1) Photographers are primarily engaged in the business of rendering a nontaxable professional service in the taking, development,[~~and~~] printing, and provision of an original photograph. The photographer is [~~thus~~]the consumer of all tangible personal property and digital property used in the performance of his or her professional service and the tax shall apply at the time of the sale of the property to the photographer. This treatment shall apply to digital photography and print-based photography[~~the tangible personal property which he uses in the performance of this professional service and the tax will apply at the time of the sale of such material to him~~].

(2) In making additional prints, however, the photographer is producing and selling tangible personal property and the tax shall apply[~~applies~~] to the selling price of the prints. The tax shall[~~does~~] not apply to sales of property [~~materials~~]to the photographer which become an ingredient or component part of the prints to be sold pursuant to KRS 139.260.

Section 2. Photo Finishers. (1) The tax shall apply[~~applies~~] to charges for printing pictures or making enlargements from negatives furnished by the customer but not to charges for developing the negatives if such charges are separately stated. Tax shall[~~does~~] not apply to charges for tinting or coloring pictures furnished to the finisher by the customer.

(2) Tax shall apply [~~applies~~]to sales to photo finishers of all tangible personal property and digital property consumed [~~used~~]by them in developing negatives, finishing pictures, and coloring or tinting pictures furnished by customers. Property resold to the customer, such as sensitized paper upon which prints are made and frames and mounts sold along with finished pictures, may be purchased by the photo finisher exempt from the tax pursuant to KRS 139.260[~~, except sensitized paper upon which the prints are~~

~~made, and frames and mounts sold along with the finished pictures~~].

Section 3. X-Ray Laboratories. (1) Developers[~~Producers~~] of x-ray film for the purpose of diagnosis are the consumers of materials and supplies used in the production thereof. The tax shall apply to the sale of such materials and supplies to the laboratories developing x-ray film for the purpose of diagnosis[~~Thus, the tax applies to the sale of such materials and supplies to laboratories producing x-ray film for the purpose of diagnosis~~].

(2) The tax treatment described in Subsection 1 of this section shall apply if[~~Whether~~] the laboratory is a "lay laboratory" or is operated by a physician, surgeon, dentist, or hospital[~~is immaterial~~].

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: November 5, 2019

FILED WITH LRC: November 6, 2019 AT 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2020, at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, 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 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 January 31, 2020. 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation interprets the sales and use tax law as it applies to photographers, photo finishers, and x-ray laboratories.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide up to date guidance on the sales and use tax law as it applies to photographers, photo finishers, and x-ray laboratories.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 13A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to clarify information currently contained in the regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by updating statutory references within the "RELATES TO" section and body of the regulation, updating the promulgation statement within the "NECESSITY, FUNCTION, AND CONFORMITY" section, adding digital property and services included in KRS 139.200 per statute, modernizing the language to include digital photography, and updating language within the body of the regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide updated and accurate information regarding guidance on the sales and use tax law as it applies to photographers, photo finishers, and x-ray laboratories.

(c) How the amendment conforms to the content of the authorizing statutes: See (2)(a).

(d) How the amendment will assist in the effective administration of the statutes: See (2)(a).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All photographers, photo finishers and x-ray laboratories as well as their customers are affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are expected to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no foreseen additional costs to comply with the amended regulation known.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

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

(a) Initially: There are no expected additional costs associated with the implementation of this proposed amendment. Current staff and budgeted funding will absorb the implementation and administration of this administrative regulation as it is currently administered.

(b) On a continuing basis: There are no new costs expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenues are expected to be generated for a state or local government agency by updating this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None known.

(c) How much will it cost to administer this program for the first

year? No additional costs are expected to be incurred by the Department of Revenue in the first year of this regulation being in effect. Any costs will be absorbed by current staff and department funding.

(d) How much will it cost to administer this program for subsequent years? No additional costs are expected to be incurred in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET**
**Kentucky Retirement Systems**
**(Amendment)**

**105 KAR 1:250. Participation of county attorney employees.**

RELATES TO: KRS 78.5302

STATUTORY AUTHORITY: KRS 61.645

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation sets out the procedures for determining membership in either the Kentucky Employees Retirement System or County Employees Retirement System for each employee of a county attorney who is paid from[~~the county attorney's delinquent tax fees, federal or state grant funds received for collection of child support or~~] any[~~other~~] source of funds outside the control of the fiscal court, urban-county government, or Prosecutors Advisory Council.

Section 1. For each employee paid in whole or in part from any[~~delinquent tax fees, federal or state grant funds received for collection of child support or other~~] funds outside the control of the fiscal court, urban-county government, or Prosecutors Advisory Council, the county attorney shall complete and submit a Form 2110, Retirement System Determination – County Attorney Employee,[~~Form 110, Retirement System Membership Determination, dated August 1992~~,] to the retirement office. The county attorney shall submit the form on or before the date the first contributions are reported on each employee or prior to the employee assuming the new job function and duties, which causes the employee's participation in a retirement system to change between the County Employees Retirement System and Kentucky Employees Retirement System.

Section 2. The county attorney shall determine the system in which each employee shall participate based on the following:

(1) For an employee[~~currently~~] participating in the County Employees Retirement System or Kentucky Employees Retirement System, the county attorney shall continue to make the required contributions for[~~the supplementary~~] creditable compensation paid to the employee, in whole or in part, from any funds outside the control of the fiscal court, urban-county government, or Prosecutors Advisory Council, to the system in which the employee is participating unless the employee experiences a modification in job function such that the employee's duties are more appropriately related to participation in a different system pursuant to KRS 78.5302(2).

(2) The[~~For employees not currently participating in a retirement system, the~~] employee shall participate in the Kentucky Employees Retirement System if a majority of the employee's job function[~~time~~] is related to the[~~spent in performing~~] prosecutorial duties of the county attorney's office. The employee shall participate in the County Employees Retirement System if a majority of the employee's job function[~~time~~] is related to the[~~spent performing~~] civil legal representation of the fiscal court and other county officials[~~, the employee shall participate in the County Employees Retirement System~~].

(3) For those employees whose time is spent performing duties related to child support collection cases, whether criminal or civil, the employee shall participate in the retirement system that[~~which~~] the county attorney has selected for child support enforcement employees consistent with the funding and operational methods of the county attorney's office.

(4) For purposes of this section, prosecutorial duties shall include duties and functions related to the prosecution of criminal cases in the district or circuit courts of the Commonwealth. Civil legal representation shall include duties and functions related to the representation of the fiscal court, its officers or employees, or other elected county officers in any civil or administrative proceeding in state or federal courts and administrative agencies.

Section 3. (1) Kentucky Retirement Systems may, at any time, conduct an audit of a county attorney's determination regarding employee participation in the Kentucky Employees Retirement System or the County Employees Retirement System to verify compliance with KRS 78.5302.

(2) Upon request, the county attorney shall provide Kentucky Retirement Systems with information regarding an employee's job duties, funding source for the employee's position, and respond to inquiries from the Systems to confirm the employee's correct system participation[~~Section 3. Once the county attorney has determined the system in which an employee shall participate, the employee shall participate in the designated system as long as he remains an employee of the county attorney regardless of any change in the employee's duties or responsibilities~~].

Section 4. Incorporation by Reference. (1) "Form 2110, Retirement System Determination – County Attorney Employees", March 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.[~~Section 4. The form required by this administrative regulation is incorporated by reference and may be obtained from the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.~~]

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: November 1, 2019

FILED WITH LRC: November 1, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2020 at 10:00 a.m. at the Kentucky Retirement Systems, 1270 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2020. 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: Mark C. Blackwell, Executive Director Office of Legal Services, Kentucky Retirement Systems, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8645, fax (502) 696-8801, email Legal.Non-Advocacy@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mark C. Blackwell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for determining membership in either the Kentucky Employees Retirement System or County Employees Retirement System for each employee of a county attorney who is paid from any source of funds outside the control of the fiscal court, urban-county government, or Prosecutors Advisory Council.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for determining membership in either the Kentucky Employees Retirement System or County Employees Retirement System for each employee of a county attorney who is paid from any source of funds outside the control of the fiscal court, urban-county government, or Prosecutors Advisory Council.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by establishing the procedures for determining membership in either the Kentucky Employees Retirement System or County Employees Retirement System for each employee of a county attorney who is paid from any source of funds outside the control of the fiscal court, urban-county government, or Prosecutors Advisory Council pursuant to the requirements of KRS 78.5302(2).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the procedures for determining membership in either the Kentucky Employees Retirement System or County Employees Retirement System for each employee of a county attorney who is paid from any source of funds outside the control of the fiscal court, urban-county government, or Prosecutors Advisory Council.

(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 the provision preventing a county attorney from changing the system of an existing employee that experiences a modification of job duties. This is consistent with KRS 78.5302(2).

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to remove the provision preventing a county attorney from changing the membership of an existing employee that experiences a modification of job duties from one system to the other system. This is consistent with KRS 78.5302(2).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by removing the provision preventing a county attorney from changing the membership of an existing employee that experiences a modification of job duties from one system to the other system. This is consistent with KRS 78.5302(2).

(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 removing the provision preventing a county attorney from changing the membership of an existing employee that experiences a modification of job duties from one system to the other system. This is consistent with KRS 78.5302(2).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Retirement Systems and county attorneys.

(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 county attorney will have to determine the proper membership for each employee paid with funds outside the control of the fiscal court, urban-county government, or Prosecutors Advisory Council based upon the employee's job function and duties pursuant to KRS 78.5302(2).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Neither the employer or Kentucky Retirement Systems should incur additional cost due to the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The county attorney will be permitted to change the system of membership for an employee based upon a modification or change in job duties.

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

(a) Initially: The only cost will be the administrative expenses of Kentucky Retirement Systems, which should not be impacted by this amendment to the regulation.

(b) On a continuing basis: There will be no continuing cost aside from Kentucky Retirement Systems' normal administrative expenses.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Retirement Systems are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All county attorneys are subject to the same procedures.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Retirement Systems and county attorneys.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 78.5302.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? The administration of this regulation will not increase Kentucky Retirement Systems' normal administrative expenses.

(d) How much will it cost to administer this program for subsequent years? There will be no increase in costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**JUSTICE AND PUBLIC SAFETY**
**Kentucky Board of Pharmacy**
**(Amendment)**

**201 KAR 2:020. Examination.**

RELATES TO: KRS 218A.205(7), 315.050

STATUTORY AUTHORITY: KRS 218A.205(7), 315.050(2), 315.191(1), (2), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.050(2) and 315.191(1)(c) authorize the board to promulgate administrative regulations to prescribe the time, place, method, manner, scope, and subjects of examinations. KRS 218A.205 (7) requires the board to establish requirements for background

checks for licensees. This administrative regulation establishes the examination and application requirements for obtaining a license to practice pharmacy in Kentucky.

Section 1. The examination for licensure shall include:
(1) The North American Pharmacist Licensure Examination (NAPLEX); and
(2) The Multistate Pharmacy Jurisprudence Examination (MPJE).

Section 2. The passing score on the required examinations shall be:
(1) At least seventy-five (75) on the basis of the NAPLEX and the MPJE grades shall not be used in computing the NAPLEX; and
(2) At least seventy-five (75) on the basis of the MPJE.

Section 3. If an applicant fails to obtain the necessary scores in any of the tests described in Section 2 of this administrative regulation, the applicant may upon proper application retake the tests upon the payment of the fee set forth in 201 KAR 2:050 plus any direct costs for test materials and supplies. An applicant who has failed any test may retake that test within one (1) year of the date the applicant first failed the test without having to reapply.

Section 4. All results of examinations shall be preserved according to the Board of Pharmacy Record Retention Schedule.

Section 5. Fees submitted with an application shall be nonrefundable.

Section 6. Prior to approval for examination, an applicant shall:
(1) Submit to a nation-wide criminal background investigation by means of fingerprint check by the Department of Kentucky State Police and the Federal Bureau of Investigation; and
(2) Submit to a query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

Section 7. License, Fee. An applicant shall submit:
(1) An Initial Application for Pharmacist Licensure pursuant to KRS 315.050; and
(2) As appropriate, the fee established by 201 KAR 2:050, Section 1(1).

Section 8. Incorporation by Reference. (1) "Initial Application for Pharmacist Licensure", Form 1, 12/2019[~~7/2012~~], is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday 8:00 a.m. to 4:30p.m.

LARRY A. HADLEY, R. Ph., Executive Director
APPROVED BY AGENCY: November 5, 2019
FILED WITH LRC: November 6, 2019 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 29, 2020 at 9:00 a.m. Eastern Time at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2020. 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: Larry Hadley, 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 Larry.Hadley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Hadley
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the requirements for the examinations
(b) The necessity of this administrative regulation: KRS 315.050(2) and 315.191(1)© authorizes the Board of Pharmacy to promulgate administrative regulations to prescribe the time, place, method, manner, scope, and subjects of examinations. KRS 218A.205(7) requires the board to establish requirements for background checks for licensees. This administrative regulation establishes the examination and application requirements for obtaining a license to practice pharmacy in Kentucky.
(c) How this administrative regulation conforms to the content of the authorizing statues: This administrative regulation establishes the examination and application requirements for obtaining a license to practice pharmacy in Kentucky.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:
Incorporate by reference new pharmacy application for licensure.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Retitle this regulation; Incorporate by reference new pharmacy application for licensure.
(b) The necessity of the amendment to this administrative regulation: The criteria needed to be updated.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.050(2) and 315.191(1)© authorizes the Board of Pharmacy to promulgate administrative regulations to prescribe the time, place, method, manner, scope, and subjects of examinations.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies by incorporate by reference new pharmacy application for licensure.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates pharmacies and pharmacists will be affected minimally by this regulation amendment.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pharmacies and pharmacists will have to familiarize themselves with amended language. The board will help to educate pharmacists and pharmacies in these changes.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected costs for the identities to comply with the amendment.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will clarify previous statutory language.
(5) Provide an estimate of how much it will cost to implement this administrative Regulation:
(a) Initially: No costs will be incurred.
(b) On a continuing basis: No costs will be incurred.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required because of this new regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacists and sponsors that desire approval for continuing education credit.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy will be the only entity impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.050(2).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the Board in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for the Board in subsequent years.

(c) How much will it cost to administer this program for the first year? No costs are required to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are required to administer this program for subsequent years.

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

**GENERAL GOVERNMENT CABINET**
**Kentucky Board of Dentistry**
**(Amendment)**

**201 KAR 8:550. Anesthesia and sedation.**

RELATES TO: KRS 313.035

STATUTORY AUTHORITY: KRS 313.035(1)

NECESSITY, FUNCTION AND CONFORMITY: KRS 313.035(1) requires the board to promulgate administrative regulations related to[~~conscious~~] anesthesia and sedation permits. This administrative regulation establishes requirements for permits to perform[~~conscious~~] sedation or anesthesia.

Section 1. Definitions. (1) "Analgesia" means the diminution or elimination of pain.

(2) "ADA" means American Dental Association.

(3) "ASA" means American Society of Anesthesiologists.

(4) "Competency" means displaying special skill or knowledge derived from training and experience.

(5) "Continual" means repeated regularly and frequently in steady succession.

(6) "Continuous" means prolonged without any interruption.[~~(1) "Advanced Cardiac Life Support" or "ACLS" means a certification that an individual has successfully completed an advanced cardiac life support course that meets or exceeds the standards established by the American Heart Association and incorporated by reference in 201 KAR 8:532.~~

~~(2) "Anesthesia" means an artificially induced insensibility to pain usually achieved by the administration of gases or drugs.~~

~~(3) "Anesthesia and sedation" means:~~

~~(a) Minimal sedation;~~

~~(b) Moderate sedation;~~

~~(c) Deep sedation; and~~

~~(d) General anesthesia.~~

~~(4) "Board" means the Kentucky Board of Dentistry.~~

~~(5) "Certified registered nurse anesthetist" means a registered nurse who is currently certified to practice nurse anesthesia in Kentucky.~~

~~(6) "Conscious sedation permit" means a permit that was issued by the board prior to February 1, 2011, that authorized the dentist to whom the permit was issued to administer parenteral sedation for the practice of dentistry.~~]

(7) "Deep sedation" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. The patient may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

(8) "Enteral" means a technique of administration in which the agent is absorbed through the gastrointestinal (GI) tract or oral mucosa (oral, rectal, or sublingual).

(9) "General anesthesia" means a drug-induced loss of consciousness during which a patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

(10) "Immediately available" means onsite at the facility and available for immediate use.

(11) "Independently practicing qualified anesthesia provider" means an individual with a valid Kentucky license or permit to provide sedation.

(12) "Local anesthesia" means the elimination or diminution of sensation, especially pain, in one (1) part of the body by the topical application or regional injection of a drug.

(13) "Maximum Recommended Dose" or "MRD" means the maximum FDA-recommended dose of a drug for minimal sedation, as printed in FDA-approved labeling for unmonitored home use.

(14) "Minimal sedation" means a minimally depressed level of consciousness produced by a pharmacological method which retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected.[~~(9) "Facility" means a location in which anesthesia or sedation is administered for the practice of dentistry.~~

~~(10) "Facility inspection" means an on-site inspection by the board or its designee to determine if a facility where the applicant proposes to provide anesthesia and sedation is adequately supplied, equipped, staffed, and maintained in a condition to support the provision of anesthesia and sedation services in a manner that meets the requirements of this administrative regulation.~~

~~(11) "General anesthesia" means a drug-induced loss of consciousness during which patients are not arousable even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation, drug-induced depression, or changes in neuromuscular function. Cardiovascular function may be impaired.~~

~~(12) "General anesthesia permit" means a permit that was issued by the board prior to February 1, 2011, that authorized the dentist to whom the permit was issued to administer general anesthesia for the practice of dentistry.~~

~~(13) "Incident" means dental treatment performed on a patient under minimal sedation, moderate sedation, deep sedation, or general anesthesia with unforeseen complications.~~

~~(14) "Incremental dosing" means administration of multiple doses of a drug until a desired effect is reached.~~

~~(15) "Minimal sedation" means a drug-induced state, with or without nitrous oxide to decrease anxiety, in which patients respond normally to tactile stimulation and verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are maintained and do not require assistance.~~

~~(16) "Moderate enteral sedation" means a drug-induced depression of consciousness through the gastrointestinal tract or oral mucosa during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Intervention is not required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.~~

~~(17) "Moderate parenteral sedation" means a drug-induced depression of consciousness that bypasses the gastrointestinal tract or oral mucosa during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Intervention is not required to maintain a patent airway and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.~~]

(15)[~~(18)~~] "Moderate sedation" means a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Intervention is not required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

(16)[~~(19)~~] "Nitrous oxide sedation" or "N2O sedation" means a technique of inhalation sedation with nitrous oxide and oxygen.

(17) "Operating dentist" means a dentist with primary responsibility for providing dental care while a separate qualified dentist or independently practicing qualified anesthesia provider administers minimal, moderate, or deep sedation, or general anesthesia.

(18)[~~(20)~~] "Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal (GI) tract, that is, through an intramuscular, intravenous, intranasal, submucosal, subcutaneous, intraosseous administration[~~technique~~].

(19) "Pediatric patient" means a patient twelve (12) years of age or younger.

(20) "Qualified dentist" means a dentist with the appropriate training and permits to provide sedation and anesthesia in compliance with state rules and regulations.

(21) "Time-oriented anesthesia record" means documentation at appropriate time intervals of drugs administered, doses of drugs administered, and physiologic patient data obtained during patient monitoring[~~(21) "Pediatric Advanced Life Support" or "PALS" means a certification that an individual has successfully completed a pediatric advanced life support course that meets or exceeds the standards established by the American Heart Association and incorporated by reference in 201 KAR 8:532.~~

~~(22) "Sedation" means the reduction of stress or excitement by the administration of a drug that has a soothing, calming, or tranquilizing effect~~].

Section 2. Statement of Policy. (1) The administration of local anesthesia, sedation, and general anesthesia is an integral part of dental practice. The board is committed to the safe and effective use of these modalities by appropriately educated and trained dentists.

(2) The use of local anesthetics is the foundation of pain control in dentistry; dentists must be aware of the maximum, safe dosage limits for each patient. Large doses of local anesthetics carry the risk of central nervous system depression, especially in combination with sedative agents.

(3) Level of sedation is independent of the route of administration. Moderate or deep sedation, or general anesthesia, may be achieved via any route of administration.

(4) Because sedation and general anesthesia are a continuum, it is not always possible to predict how an individual patient will respond. Practitioners intending to produce a given level of sedation shall be able to diagnose and manage the physiologic consequences for patients whose level of sedation becomes deeper than initially intended. For all levels of sedation, the qualified dentist shall have the training, skills, drugs, and equipment to identify and manage such an occurrence until either assistance arrives, or the patient returns to the intended level of sedation without airway or cardiovascular complications.

(5) New indications, agents, and techniques will lead to changes in anesthesia and sedation practices. The board shall evaluate such changes for safety, efficacy, and to what extent such changes become accepted practice within the profession of dentistry.

Section 3[~~2~~]. Nitrous Oxide Sedation. (1) Nitrous oxide sedation may be used by a Kentucky-licensed dentist without a specific sedation permit or by a Kentucky-licensed dental hygienist permitted to deliver nitrous oxide analgesia under the direct supervision of a dentist[~~certified to administer block and infiltration anesthesia and nitrous oxide analgesia~~].

(2) Equipment used in the administration of nitrous oxide sedation shall have functional safeguard measures that:

(a) Limit the minimum oxygen concentration to thirty (30) percent; and

(b) Provide for scavenger elimination of nitrous oxide gas.

(3) The dentist shall:

(a) Insure that a patient receiving nitrous oxide is constantly monitored; and

(b) Be present in the office while nitrous oxide is being used.

(4) A Kentucky-registered dental assistant shall not independently administer nitrous oxide sedation, but may initiate nitrous oxide sedation if the dentist is in the office and gives the dental assistant specific instructions regarding the mode of administration and the titration, rate, and dosage of the anesthetic agent[~~A dental assistant may only deliver nitrous oxide at a rate specified by direct orders of a dentist~~].

Section 4.[~~3.~~] Minimal Sedation[~~Without a Permit~~]. (1) No license or permit is required for Minimal Sedation as described in this administrative regulation.

(2) Patients whose only response is reflex withdrawal from repeated painful stimuli shall not be considered to be in a state of minimal sedation.

(3) The enteral administration of drugs exceeding the maximum recommended dose during a single appointment is considered to be moderate sedation, and Section 5 of this administrative regulation shall apply.

(4) Nitrous oxide, when used in combination with a sedative agent, may produce minimal, moderate, or deep sedation, or general anesthesia.

(5) If more than one (1) drug is administered enterally to achieve the desired sedation effect, with or without the concomitant use of nitrous oxide, Section 5 of this administrative regulation shall apply.

(6) A dentist who administers minimal sedation shall do so within a sufficient margin of safety to avoid an unintended loss of consciousness. The use of the MRD to guide dosing for minimal sedation is intended to create this margin of safety.

(7) If minimal sedation is administered to a patient who is taking another substance known to increase the sedative properties of the patient, Section 5 of this administrative regulation shall apply.

(8) An operating dentist shall not be required to complete additional training to administer minimal sedation.

(9) The administration of minimal sedation by another qualified dentist or independently practicing qualified anesthesia provider shall require the operating dentist to maintain current certification in Basic Life Support for Healthcare Providers.

(10) Clinical Guidelines.

(a) Patient History and Evaluation. Patients considered for minimal sedation shall be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II) this evaluation shall consist of a review of the patient's current medical history and medication use. In addition, patients

with significant medical considerations (ASA III, IV) may require a consultation with their treating physician prior to being administered minimal sedation.

(b) Pre-Operative Evaluation and Preparation.

1. The patient, or the patient's parent, legal guardian or caregiver, shall be advised regarding the planned procedure and any other anticipated possible procedures associated with the delivery of any sedative agents. Informed consent for the proposed sedation shall be obtained prior to its administration.

2. Adequate oxygen supply and the equipment necessary to deliver oxygen under positive pressure shall be determined prior to the administration of minimal sedation.

3. The patient shall be physically examined prior to the administration of minimal sedation. Baseline vital signs including body weight, height, blood pressure, pulse rate, and respiration rate shall be obtained unless rendered impractical by the nature of the patient, procedure, or equipment. Body temperature shall be measured if clinically indicated.

4. Preoperative dietary restrictions shall be considered based on the sedative technique prescribed.

5. The patient, or the patient's parent, legal guardian or caregiver, shall be given pre-operative verbal and written instructions regarding the patient's sedation and procedure.

(c) Personnel and Equipment Requirements.

1. Personnel. At least one (1) additional person trained in Basic Life Support for Healthcare Providers shall be present throughout the administration of minimal sedation, in addition to the operating dentist.

2. Equipment.

a. A positive-pressure oxygen delivery system suitable for the patient being treated shall be immediately available.

b. All equipment shall be examined for proper performance prior to each administration of sedation.

c. If inhalation equipment is used, it shall have a fail-safe system which is appropriately examined and calibrated and a functioning device which prohibits the delivery of less than thirty (30) percent oxygen, or an appropriately calibrated and functioning in-line oxygen analyzer with audible alarm.

d. An appropriate scavenging system shall be used if gases other than oxygen or air are delivered to a patient.

3. Monitoring and Documentation.

a. Monitoring: A qualified dentist, or an appropriately trained individual chosen by the operating dentist, shall remain in the operating area during active dental treatment to monitor the patient continuously until the patient meets the criteria for discharge to the recovery area. The qualified dentist or other individual monitoring the treatment shall be familiar with monitoring techniques and equipment. The following shall be monitored:

b. Consciousness. The patient's level of sedation and responsiveness to verbal commands shall be continually assessed.

c. Oxygenation. Oxygen saturation by pulse oximetry may be clinically useful and shall be considered.

d. Ventilation. The patient's chest excursions shall be monitored, and their respirations verified.

e. Circulation. Blood pressure and heart rate shall be evaluated pre-operatively. Intraoperative monitoring of blood pressure may be clinically useful and shall be considered.

f. Documentation. An appropriate sedative record shall be maintained for each patient to whom sedation is administered which shall include the names of all drugs administered including local anesthetics, the time administered, the route of administration, dosages, and monitored physiological parameters.

4. Recovery and Discharge.

a. Oxygen and suction equipment shall be available immediately if a separate recovery area is utilized.

b. A qualified dentist, or an appropriately trained individual chosen by the operating dentist shall monitor the patient during recovery until the patient is ready for discharge by the operating dentist.

c. A qualified dentist shall determine and document whether the patient's level of consciousness, oxygenation, ventilation, and circulation are satisfactory prior to discharge.

d. The patient, parent, escort, legal guardian, or caregiver shall be given post-operative verbal and written instructions prior to or upon discharge.

(d) Emergency Management.

1. If a patient enters a deeper level of sedation than the dentist is qualified to provide, the dentist shall stop the dental procedure until the patient is returned to the intended level of sedation.

2. The operating dentist shall be responsible for the sedative management, adequacy of the facility and staff, equipment, protocols, and diagnosis and treatment of emergencies related to the administration of minimal sedation and patient rescue.

Section 5. Moderate Sedation. (1) The board shall issue a license or permit to a dentist prior to the administration of moderate sedation to a patient.

(2) A dentist who administers moderate sedation shall do so within a sufficient margin of safety to avoid an unintended loss of consciousness.

(3) A qualified dentist shall be aware that repeated dosing of an agent before the effects of previous dosing can be fully appreciated may result in a greater alteration of the state of consciousness than intended. A dentist who administers moderate sedation shall refrain from administering an additional drug increment before the previous dose has taken full effect.

(4) A patient whose only response is reflex withdrawal from a painful stimulus shall not be considered to be in a state of moderate sedation.

(5) Education requirements for adult moderate sedation.

(a) To administer moderate sedation to an adult patient, a dentist shall have successfully completed:

1. A comprehensive training program in moderate sedation which satisfies the requirements described in the Moderate Sedation section of the ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students at the time training was commenced; or

2. An advanced education program accredited by the Commission on Dental Accreditation which provides comprehensive and appropriate training necessary to administer and manage moderate sedation commensurate with this administrative regulation; and

3. Current certifications in Basic Life Support for Healthcare Providers and Advanced Cardiac Life Support and Pediatric Advanced Life Support.

(b) Any person currently holding a permit to provide adult moderate sedation prior to the effective date of this administrative regulation who fails to meet the requirements of this subsection shall be afforded two (2) years by the board to comply with the requirements of this subsection. Any valid moderate sedation permits issued prior to this administrative regulation shall remain active until their expiration or renewal date, at which time the requirements of this subsection shall have been met prior to renewal.

(6) Educational requirements for pediatric moderate sedation.

(a) To administer moderate sedation to a pediatric patient, a dentist shall have successfully completed:

1. An advanced education program accredited by the Commission on Dental Accreditation which provides comprehensive and appropriate training necessary to administer and manage moderate sedation commensurate with this administrative regulation; and

2. Current certifications in Basic Life Support for Healthcare Providers and Advanced Cardiac Life Support and, if administering sedation to pediatric patients, Pediatric Advanced Life Support.

(b) The operating dentist or the facility at which the moderate sedation is being administered shall maintain a current certification in Basic Life Support for Healthcare Providers in order for a qualified dentist to provide moderate sedation.

(7) Clinical Guidelines. Patient History and Evaluation. Patients considered for moderate sedation shall be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II) this evaluation shall consist of a review of the patient's current medical history, medication use, body mass index, airway evaluation, and ASA status. In addition, patients with significant medical considerations (ASA III, IV) may require a consultation with their treating physician prior to being administered moderate sedation.

(8) Pre-Operative Evaluation and Preparation. (a) Pre-Operative Evaluation and Preparation.

1. The patient, or the patient's parent, legal guardian or caregiver, shall be advised regarding the planned procedure and any other anticipated possible procedures associated with the delivery of any sedative agents. Informed consent for the proposed sedation shall be obtained prior to its administration.

2. Adequate oxygen supply and the equipment necessary to deliver oxygen under positive pressure shall be determined prior to the administration of moderate sedation.

3. The patient shall be physically examined prior to the administration of minimal sedation. Baseline vital signs including body weight, height, blood pressure, pulse rate, and respiration rate shall be obtained unless rendered impractical by the nature of the patient, procedure, or equipment. Body temperature shall be measured if clinically indicated.

4. Preoperative dietary restrictions shall be considered based on the sedative technique prescribed.

5. The patient, or the patient's parent, legal guardian, or caregiver, shall be given pre-operative verbal and written instructions regarding the patient's sedation and procedure, including pre-operative fasting instructions based on the ADA Guidelines for the Use of Sedation and General Anesthesia by Dentist adopted October 2016.

(9) Personnel and Equipment Requirements.

(a) Personnel. All clinical staff participating in the care of a moderately sedated patient shall be certified in Basic Life Support for Healthcare Providers. At least one (1) additional person certified in Advanced Cardiac Life Support shall be present throughout the administration of moderate sedation to an adult patient, in addition to the operating dentist. At least one (1) additional person certified in Pediatric Advanced Life Support shall be present throughout the administration of moderate sedation to a pediatric patient, in addition to the operating dentist.

(b) Equipment.

1. A positive-pressure oxygen delivery system suitable for the patient being treated shall be immediately available.

2. All equipment shall be examined for proper performance prior to each administration of sedation.

3. If inhalation equipment is used, it shall have a fail-safe system which is appropriately examined and calibrated and a functioning device which prohibits the delivery of less than thirty (30) percent oxygen, or an appropriately calibrated and functioning in-line oxygen analyzer with audible alarm.

4. An appropriate scavenging system shall be used if gases other than oxygen or air are delivered to a patient.

5. Equipment necessary to establish intravascular or intraosseous access and a defibrillator or automated external defibrillator shall be available until the patient meets discharge criteria.

(10) Monitoring and Documentation.

(a) Monitoring. The operating dentist shall remain in the operating room to monitor the patient continuously until the patient has recovered to a minimally sedated level. When active treatment concludes and the patient recovers to a minimally sedated level, the dentist may choose an appropriately trained individual to remain with and continue to monitor the patient until the patient is discharged from the facility. The operating dentist shall not leave the facility until the patient is discharged from the facility.

(b) The following shall be monitored:

1. Consciousness. The patient's level of sedation and responsiveness to verbal commands shall be continually assessed.

2. Oxygenation. Oxygen saturation by pulse oximetry shall be continually evaluated.

3. Ventilation: The operating dentist shall be responsible for the observation of ventilation and breathing by monitoring end tidal CO2 unless precluded or invalidated by the nature of the patient. In addition, ventilation shall be monitored by continual observation of qualitative signs, which may include auscultation of breath sounds with a precordial or pretracheal stethoscope, or observation of chest excursions.

4. Circulation. The operating dentist shall continually evaluate blood pressure and heart rate unless invalidated by the nature of the patient and noted in the time-oriented anesthesia record.

5. The patient's pulse oximetry, heart rate, end tidal CO2, respiratory rate, blood pressure, and level of consciousness shall be monitored continually and recorded at least every five (5) minutes.

6. The operating dentist shall consider the continuous ECG monitoring of a patient with significant cardiovascular disease.

(c) Documentation. An appropriate sedative record shall be maintained for each patient to whom sedation is administered which shall include the names of all drugs administered including local anesthetics, the time administered, the route of administration, dosages, and monitored physiological parameters.

(11) Recovery and Discharge.

(a) Oxygen and suction equipment shall be available immediately if a separate recovery area is utilized.

(b) The operating dentist or appropriately trained individual shall continually monitor the patient's blood pressure, heart rate, oxygenation, and level of consciousness during recovery.

(c) A qualified dentist shall determine and document whether the patient's level of consciousness, oxygenation, ventilation, and circulation are satisfactory prior to discharge.

(d) The patient, parent, escort, legal guardian, or caregiver shall be given post-operative verbal and written instructions prior to or upon discharge.

(e) If a pharmacological reversal agent is administered before the patient's discharge criteria have been met, the patient shall be monitored for a longer period than usual before discharge, since re-sedation may occur once the effects of the reversal agent have waned.

(12) Emergency Management.

(a) If a patient enters a deeper level of sedation than the dentist is qualified to provide, the dentist shall stop the dental procedure until the patient is returned to the intended level of sedation.

(b) The operating dentist shall be responsible for the sedative management, adequacy of the facility and staff, equipment, protocols, and diagnosis and treatment of emergencies related to the administration of moderate sedation and patient rescue.

Section 6. Deep Sedation and General Anesthesia. (1) The board shall issue a license or permit to a dentist prior to the administration of moderate sedation to a patient.

(2) Education requirements.

(a) To administer deep sedation or general anesthesia, a dentist shall have successfully completed:

1. An advanced education program accredited by the Commission on Dental Accreditation which provides comprehensive and appropriate training necessary to administer and manage deep sedation or general anesthesia; and

2. Current certifications in Basic Life Support for Healthcare Providers and Advanced Cardiac Life Support and, if administering sedation to pediatric patients, Pediatric Advanced Life Support.

(b) The operating dentist or the facility at which deep sedation or general anesthesia is being administered shall maintain a current certification in Basic Life Support for Healthcare Providers in order for a qualified dentist to provide moderate sedation, with at least one (1) additional person certified in Advanced Cardiac Life Support or an equivalent.

(3) Clinical Guidelines. Patient History and Evaluation. Patients considered for deep sedation or general anesthesia shall be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II) this evaluation shall consist of a review of the patient's current medical history, medication use, body mass index, airway evaluation, nothing by mouth status, and ASA status. In addition, patients with significant medical considerations (ASA III, IV) may require a consultation with their treating physician prior to being administered moderate sedation. Patients with elevated BMI may be at increased risk for airway associated morbidity, particularly if in association with other factors such as obstructive sleep apnea.

(4) Pre-Operative Evaluation and Preparation.

(a) Pre-Operative Evaluation and Preparation.

1. The patient, or the patient's parent, legal guardian, or caregiver, shall be advised regarding the planned procedure and any other anticipated possible procedures associated with the

delivery of any sedative agents. Informed consent for the proposed sedation shall be obtained prior to its administration.

2. Adequate oxygen supply and the equipment necessary to deliver oxygen under positive pressure shall be determined prior to the administration of moderate sedation.

3. The patient shall be physically examined prior to the administration of minimal sedation. Baseline vital signs including body weight, height, blood pressure, blood oxygen saturation, pulse rate, and respiration rate shall be obtained unless rendered impractical by the nature of the patient, procedure, or equipment. Body temperature shall be measured if clinically indicated.

4. The patient, or the patient's parent, legal guardian, or caregiver, shall be given pre-operative verbal and written instructions regarding the patient's sedation and procedure, including pre-operative fasting instructions based on the ASA Summary of Fasting and Pharmacologic Recommendations.

5. An intravenous line shall be established and secured throughout the procedure, except for patients with special needs as provided in subsection (8) of this section.

(5) Personnel and Equipment Requirements.

(a) Personnel. All clinical staff participating in the care of a deeply sedated patient or a patient who has been administered general anesthesia shall be certified in Basic Life Support for Healthcare Providers. At least one (1) additional person certified in Advanced Cardiac Life Support shall be present throughout the administration of moderate sedation to an adult patient, in addition to the operating dentist. At least one (1) additional person certified in Pediatric Advanced Life Support shall be present throughout the administration of moderate sedation to a pediatric patient, in addition to the operating dentist.

(b) A minimum of three (3) individuals shall be present while a patient is being treated with deep sedation or general anesthesia. When a pediatric patient is being treated with deep sedation or general anesthesia, a separate qualified anesthesia provider, in addition to the operating dentist, shall manage the patient's anesthesia unless the anesthesia is performed by an oral and maxillofacial surgeon.

(c) Equipment.

1. A positive-pressure oxygen delivery system suitable for the patient being treated shall be immediately available.

2. All equipment shall be examined for proper performance prior to each administration of sedation.

3. If inhalation equipment is used, it shall have a fail-safe system which is appropriately examined and calibrated and a functioning device which prohibits the delivery of less than thirty (30) percent oxygen, or an appropriately calibrated and functioning in-line oxygen analyzer with audible alarm.

4. An appropriate scavenging system shall be used if gases other than oxygen or air are delivered to a patient.

5. Equipment necessary to establish intravenous access and to monitor end tidal CO2 and auscultation of breath sounds shall be available.

6. Resuscitation mediations, an appropriate defibrillator, and equipment and drugs necessary to provide advanced airway management and advanced cardiac life support shall be immediately available.

(6) Monitoring and Documentation.

(a) Monitoring. A qualified dentist administering deep sedation or general anesthesia shall remain in the operating room to monitor the patient continuously until the patient meets the criteria for recovery. The qualified dentist shall not leave the facility until the patient is discharged from the facility.

(b) The following shall be monitored:

1. Oxygenation. Oxygen saturation by pulse oximetry shall be continually evaluated.

2. Ventilation. For an intubated patient, end-tidal CO2 shall be continually monitored and evaluated. For a non-intubated patient, end-tidal CO2 shall be continually monitored and evaluated unless precluded or invalidated by the nature of the patient. In addition, ventilation shall be monitored by continual observation of qualitative signs, which may include auscultation of breath sounds with a precordial or pretracheal stethoscope, or observation of chest excursions.

3. Circulation. The qualified dentist shall continually evaluate heart rate and rhythm by ECG throughout the procedure, as well as the patient's pulse rate by pulse oximetry.

4. Temperature. A device capable of measuring body temperature shall be readily available during the administration of deep sedation or general anesthesia. Equipment necessary to continually monitor body temperature shall be available and used whenever triggering agents associated with malignant hyperthermia are administered.

5. The patient's respiration rate and blood pressure shall be continually monitored and evaluated.

6. The patient's pulse oximetry, heart rate, end tidal CO2, respiratory rate, blood pressure, and level of consciousness shall be monitored continually and recorded at least every five (5) minutes.

(b) Documentation. An appropriate sedative record shall be maintained for each patient to whom sedation is administered which shall include the names of all drugs administered including local anesthetics, the time administered, the route of administration, dosages, and monitored physiological parameters.

(7) Recovery and Discharge.

(a) Oxygen and suction equipment shall be available immediately if a separate recovery area is utilized.

(b) The qualified dentist shall continually monitor the patient's blood pressure, heart rate, oxygenation, and level of consciousness until the patient reaches a minimal level of sedation.

(c) The qualified dentist shall determine and document whether the patient's level of consciousness, oxygenation, ventilation, and circulation are satisfactory prior to discharge.

(d) The patient, parent, escort, legal guardian, or caregiver shall be given post-operative verbal and written instructions prior to or upon discharge.

(8) Patients with Special Needs.

(a) Because many dental patients undergoing deep sedation or general anesthesia are mentally or physically challenged, it is not always possible to administer a comprehensive physical examination or appropriate laboratory tests prior to sedation. In this circumstance, the dentist responsible for administering the deep sedation or general anesthesia shall document the reasons preventing the examination of the patient in the patient's medical record.

(b) Deep sedation or general anesthesia may be administered without first establishing an indwelling intravenous line if the establishment of intravenous access after deep sedation or general anesthesia is rendered necessary because of poor patient cooperation.

(9) Emergency Management. The operating dentist shall be responsible for the sedative management, adequacy of the facility and staff, equipment, protocols, and diagnosis and treatment of emergencies related to the administration of patient rescue and deep sedation or general anesthesia.[~~(1) A permit shall not be required for a dentist to administer minimal enteral sedation for patients age thirteen (13) and older.~~

~~(2) A dentist who intends to administer minimal sedation shall indicate the intent to administer minimal sedation in the patient's record.~~

~~(3) Medication used to produce minimal sedation shall not exceed the manufacturer's recommended dose (MRD) for unmonitored use by the individual. Additional dosing shall be within the MRD limits.~~

~~(4) A dentist who administers minimal sedation shall maintain a margin of safety and a level of consciousness that does not approach moderate sedation and other deeper states of sedation and general anesthesia.~~

~~(5) Nitrous oxide may be combined with an oral medication. If nitrous oxide is combined with an oral medication, the level of sedation shall be maintained at the level of minimal sedation.~~

~~Section 4. Permit and Location Certificate Required. (1) A dentist shall not administer an anesthetic technique in order to attain a level beyond minimal sedation for the practice of dentistry unless:~~

~~(a) The dentist holds an appropriate Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral~~

~~Sedation, Moderate Pediatric Sedation, or Deep Sedation or General Anesthesia permit issued by the board; or~~

~~(b) The dentist holds a conscious sedation or general anesthesia permit that shall be converted to a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation or General Anesthesia permit at the next license renewal.~~

~~(2) A dentist shall not administer an anesthetic technique under a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, Deep Sedation or General Anesthesia, conscious sedation, or general anesthesia permit issued by the board at a facility unless:~~

~~(a) The facility has a current Anesthesia and Sedation Facility Certificate issued by the board; or~~

~~(b) The facility passed an inspection by the board for the purpose of issuing a conscious sedation or general anesthesia permit.~~

~~(3) A treating dentist who does not hold an anesthesia and sedation permit shall not allow a physician anesthesiologist, another dentist who holds an anesthesia and sedation permit, or a certified registered nurse anesthetist to administer an anesthetic technique in order to attain a level beyond minimal sedation for the practice of dentistry at a facility owned or operated by the treating dentist unless:~~

~~(a) The facility has a current Anesthesia and Sedation Facility Certificate issued by the board; or~~

~~(b) The facility passed an inspection by the board for the purpose of issuing a conscious sedation or general anesthesia permit.~~

~~Section 5. Classifications of Anesthesia and Sedation Permits. The following permits shall be issued by the board to a qualified licensed dentist:~~

~~(1) Minimal Pediatric Sedation permit that authorizes a dentist to use minimal enteral sedation for patients age five (5) to twelve (12) Medication or medications used to produce minimal sedation shall not exceed the manufacturer's recommended dose (MRD) for unmonitored use by the individual. Incremental dosing shall be prohibited. All dosing shall be administered in the dental office. A dentist who administers minimal sedation shall maintain a margin of safety and a level of consciousness that does not approach moderate sedation and other deeper states of sedation and general anesthesia. Nitrous oxide may be combined with an oral medication. If nitrous oxide is combined with an oral medication, the level of sedation shall be maintained at the level of minimal sedation;~~

~~(2) Moderate Enteral Sedation permit that authorizes a dentist to use moderate enteral sedation for patients age thirteen (13) and older;~~

~~(3) Moderate Parenteral Sedation permit that authorizes a dentist to use moderate parenteral sedation for patients age thirteen (13) and older; (4) Moderate Pediatric Sedation permit that authorizes a dentist to use moderate sedation by any route of administration for patients age twelve (12) and under; and~~

~~(5) Deep Sedation or General Anesthesia permit that authorizes a dentist to use:~~

~~(a) General anesthesia; or~~

~~(b) Deep sedation. Section 6. Qualifications for Obtaining a Minimal Pediatric Sedation Permit. To qualify for a Minimal Pediatric Sedation permit, an applicant shall:~~

~~(1) Submit an Application for Sedation or Anesthesia Permit;~~

~~(2) Pay the fee required by 201 KAR 8:520;~~

~~(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and~~

~~(4) Provide proof of successful completion of: (a) a Commission on Dental Accreditation (CODA) accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage minimal sedation; or~~

~~(b) Provide proof of successful completion of a board-approved course that shall consist of a minimum of twenty-four (24) hours of didactic instruction on pediatric minimal sedation by the enteral route or the combination enteral and nitrous oxide route.~~

~~Section 7. Qualifications for Obtaining a Moderate Enteral Sedation Permit. To qualify for a Moderate Enteral Sedation permit, an applicant shall:~~

~~(1) Submit an Application for Sedation or Anesthesia Permit;~~

~~(2) Pay the fee required by 201 KAR 8:520;~~

~~(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and~~

~~(4) Provide proof of successful completion of: (a) A Commission on Dental Accreditation (CODA) accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage moderate sedation; or~~

~~(b) Provide proof of successful completion of a board-approved course that shall consist of a minimum of twenty-four (24) hours of didactic instruction plus management of at least ten (10) adult case experiences by the enteral route or the combination enteral and nitrous oxide route. These ten (10) cases shall include at least three (3) live (on sight) clinical dental experiences managed by participants in groups that shall not exceed five (5) individuals. These three (3) live (on-sight) experiences may be obtained by observing a permit level dentist in his or her office, and the remaining cases may include simulations and video presentations and shall include at least one (1) experience in returning a patient from deep to moderate sedation.~~

~~Section 8. Qualifications for Obtaining a Moderate Parenteral Sedation Permit. To qualify for a Moderate Parenteral Sedation permit, an applicant shall:~~

~~(1) Submit an Application for Sedation or Anesthesia Permit;~~

~~(2) Pay the fee required by 201 KAR 8:520;~~

~~(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and~~

~~(4) Provide proof of successful completion of: (a) A CODA-accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage moderate parenteral sedation; or~~

~~(b) Provide proof of successful completion of a board-approved course that shall consist of a minimum of sixty (60) hours of didactic instruction plus management of at least twenty (20) patients per course participant in moderate parenteral sedation techniques.~~

~~Section 9. Qualifications for Obtaining a Moderate Pediatric Sedation Permit. To qualify for a Moderate Pediatric Sedation permit, an applicant shall:~~

~~(1) Submit an Application for Sedation or Anesthesia Permit;~~

~~(2) Pay the fee required by administrative regulation;~~

~~(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and~~

~~(4) Provide proof of successful completion of a CODA-accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage moderate sedation for patients age twelve (12) and under.~~

~~Section 10. Qualifications for Obtaining a Deep Sedation or General Anesthesia Permit. To qualify for a Deep Sedation or General Anesthesia permit, an applicant shall:~~

~~(1) Submit an Application for Sedation or Anesthesia Permit;~~

~~(2) Pay the fee required by administrative regulation;~~

~~(3) Hold current certification in either ACLS or PALS; and (4) Provide proof of successful completion of:~~

~~(a) A board-approved Accreditation Council for Graduate Medical Education (ACGME) accredited post doctoral training program in anesthesiology which affords comprehensive and appropriate training necessary to administer deep sedation and~~

~~general anesthesia;~~

~~(b) A board-approved nurse anesthesia program accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs that affords comprehensive and appropriate training necessary to administer deep sedation and general anesthesia;~~

~~(c) Successful completion of a minimum of two (2) years advanced clinical training in anesthesiology from a Joint Commission on Accreditation of Healthcare Organization (JCAHO) accredited institution that meets the objectives set forth in part two (2) of the American Dental Association's Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry; or~~

~~(d) Provide proof of successful completion of a CODA-accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage deep sedation and general anesthesia.~~]

Section 7.[~~11.~~] Multiple Application Levels Permitted. Dentists with the required education and training to provide[~~for~~] more than one (1) level of sedation may mark their levels of qualification on the Application for Sedation or Anesthesia Permit[~~, based on the requirements of Sections 6 through 10 of this administrative regulation~~].

Section 8.[~~12.~~] Location Requirement. A dentist holding a[~~Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, Deep Sedation or General Anesthesia, conscious sedation, or general anesthesia~~] permit under this administrative regulation shall advise the board of the name and address of each facility where the dentist intends to or has ceased to administer anesthesia and sedation by submitting the Anesthesia and Sedation Permit Location Notification Form within ten (10) business days of the change.

Section 9.[~~13. Anesthesia and Sedation~~] Facility Certificates. (1) The owner or operator of a facility shall obtain a facility certificate[~~an Anesthesia and Sedation Facility Certificate~~] from the board for any location at which[~~:~~

~~(a)~~] a dentist holding a sedation or[~~Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, Deep Sedation or General Anesthesia, conscious sedation, or~~] general anesthesia permit provides moderate sedation, deep sedation or general anesthesia. A facility certificate is not required for minimal sedation or nitrous oxide sedation alone.[~~may administer anesthesia and sedation under the permit; or~~

~~(b)~~](2) A facility certificate shall be required if a dentist allows an independently practicing qualified anesthesia provider to administer sedation or general anesthesia in a dental office[~~The treating dentist may allow a physician anesthesiologist, another dentist who holds an anesthesia and sedation permit, or a certified registered nurse anesthetist to administer an anesthetic technique in order to attain a level beyond minimal sedation for the practice of dentistry~~].

(3)[~~(2)~~] A facility owner or operator desiring to obtain an Anesthesia and Sedation Facility Certificate shall:

(a) Submit an Application for a facility certificate[~~an Anesthesia and Sedation Facility Certificate~~];

(b) Pay the fee required by 201 KAR 8:520; and

(c) Attest that the facility meets the requirements of this administrative regulation[~~Successfully pass a facility inspection as outlined in Section 14 of this administration. (3) A dentist currently in an advanced training course for sedation may request the Board of Dentistry complete a Sedation Facility Inspection prior to completion of the course~~].

(3)[~~(4)~~] The owner or operator of a facility shall not allow an individual to administer anesthesia or sedation unless the individual is permitted to do so under this administrative regulation.

(4)[~~(5)~~] The owner or operator of a facility shall maintain for seven (7)[~~five (5)~~] years for inspection by the board the name and license number of each dentist or independently practicing qualified anesthesia provider[~~, physician anesthesiologist, or certified registered nurse anesthetist~~] who has administered anesthesia or moderate sedation at that location.

(5) The owner or operator of a facility shall ensure that the facility remains properly equipped and staffed for the duration of time that moderate sedation, deep sedation, or general anesthesia is provided at the facility.[~~(6) The owner or operator of a facility shall ensure that the facility:~~

~~(a) Remains properly equipped in accordance with Section 14 of this administrative regulation; and~~

~~(b) Remains properly staffed in accordance with Section 15 of this administrative regulation.~~]

(6)[~~(7) In addition to the requirements contained in subsection (6) of this section,~~] The owner or operator of a facility shall ensure that the facility has appropriate nonexpired emergency and sedation medications.

Section 10. Renewal of Facility Certificate. (1) Active facility certificates issued prior to the effective date of this administrative regulation shall expire on December 31 of the second year following their date of issuance.

(2) New facility certificates shall remain active for a period of two (2) years.

(3) To renew a facility certificate, the owner or operator shall:

(a) Submit a completed and signed Application for Renewal of Facility Certificate;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Attest that the facility meets the requirements of this administrative regulation.

Section 11[14]. Facility[~~Inspection~~] Criteria. (1) To qualify for an Anesthesia and Sedation Facility Certificate, the owner or operator of a facility shall attest that the facility has the following[~~pass an evaluation of facility equipment, medications, and clinical records.~~

~~(a) The following shall be provided by the facility to qualify~~]:

(a)[~~1.~~] Oxygen and gas delivery system, backup system fail-safe;[~~2. Gas storage facility;~~]

(b)[~~3.~~] Safety indexed gas system;

(c)[~~4.~~] Suction and backup system;

(d)[~~5.~~] Auxiliary lighting system;

(e) Operating[~~6. Suitability of operating~~] room to include:

1.[~~a.~~] Size, which shall be at a minimum ten (10) feet by eight (8) feet or eighty (80) square feet;

2.[~~b.~~] Operating primary light source and secondary portable back-up source[, unless back-up generator is available]; and

3.[~~c.~~] Accessibility by emergency medical staff;

(f)[~~7.~~] Recovery area, including oxygen, suction, and[~~ visual and~~] electronic monitoring, which may include the operating room;

(g)[~~8.~~] Preoperative medical history and physical evaluation form; and

(h)[~~9.~~] Anesthesia and monitoring equipment checked to insure proper working order.

(2) The following shall be maintained in proper working order by the facility or by the qualified individual administering sedation or anesthesia at or on behalf of the facility:[~~(b) The following shall be provided by the facility or by an individual listed in Section 22 of this administrative regulation:~~]

(a)[~~1.~~] Appropriate drugs for each procedure, all of which shall be unexpired, including reversal agents and emergency medications;

(b)[~~2.~~] Appropriate devices to maintain an airway with positive pressure ventilation;

(c)[~~3.~~] Anesthesia records, including monitoring and discharge records[~~and a check sheet.~~

~~a. The check sheet shall be signed by the provider and the dentist and placed in each record.~~

~~b. If the dentist is the provider, only the dentist's signature shall be required~~];

(d)[~~4.~~] Monitoring equipment, including pulse oximeter, blood pressure monitor, and end tidal CO2 monitor. An electrocardiogram (EKG) shall be required for facilities providing deep sedation or general anesthesia;

(e) Defibrillator or automated external defibrillator (AED); and

(f) Precordial stethoscope or pretracheal stethoscope for deep sedation or general anesthesia in pediatric patients.[~~and blood pressure monitoring;~~

~~5. Electrocardiogram (EKG):~~

~~a. May be present for use by Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, and Moderate Pediatric Sedation permit holders for patients with significant cardiac history; and~~

~~b. Shall be present for use by Deep Sedation or General Anesthesia permit holders;~~

~~6. Defibrillator or automated external defibrillator (AED) for moderate and Deep Sedation or General Anesthesia permits; and~~

~~7. For deep sedation or general anesthesia in pediatric patients:~~

~~a. A precordial stethoscope; or~~

~~b. A pretracheal stethoscope.~~

~~(2) During a facility inspection, inspectors shall:~~

~~(a) Examine the facility's equipment to determine if it is in proper working order;~~

~~(b) Determine if appropriate emergency drugs are present; and~~

~~(c) Determine if emergency drugs are nonexpired.~~

~~Section 15. Inducing a Level of Sedation for a Patient. (1) Administration of minimal pediatric sedation, moderate enteral sedation, moderate parenteral sedation, moderate pediatric sedation, deep sedation, or general anesthesia to a patient requires at least the following appropriately trained individuals:~~

~~(a) The treating dentist;~~

~~(b) An individual trained and competent in basic life support (BLS) or its equivalent to assist the treating dentist; and~~

~~(c) Another individual trained and competent in BLS or its equivalent in close proximity to assist if needed.~~

~~(2) A dentist administering minimal pediatric sedation, moderate enteral sedation, moderate parenteral sedation, moderate pediatric sedation, deep sedation, or general anesthesia to a patient shall not leave the site until the patient:~~

~~(a) Is conscious;~~

~~(b) Is spontaneously breathing;~~

~~(c) Has stable vital signs;~~

~~(d) Is ambulatory with assistance; and~~

~~(e) Is under the care of a responsible adult.~~

~~(3) A treating dentist who allows a physician, another dentist, or certified registered nurse anesthetist to administer minimal pediatric sedation, moderate enteral sedation, moderate parenteral sedation, moderate pediatric sedation, deep sedation, or general anesthesia under Section 22 of this administrative regulation shall ensure that the physician, dentist, or certified registered nurse anesthetist shall not leave the site until the patient:~~

~~(a) Is conscious;~~

~~(b) Is spontaneously breathing;~~

~~(c) Has stable vital signs;~~

~~(d) Is ambulatory with assistance; and~~

~~(e) Is under the care of a responsible adult.~~

~~Section 16. Conscious Sedation Permits and General Anesthesia permits. (1) A dentist who holds a current general anesthesia permit may continue to administer anesthesia and sedation consistent with a Deep Sedation or General Anesthesia permit until the expiration date of the permit.~~

~~(2) A dentist who holds a current conscious sedation permit and meets the requirements of Section 9(4) of this administrative regulation may continue to administer anesthesia and sedation consistent with a Moderate Pediatric Sedation permit until the expiration date of the permit.~~

~~(3) A dentist who holds a current conscious sedation permit and meets the requirements of Section 8 of this administrative regulation may continue to administer anesthesia and sedation consistent with a Moderate Parenteral Sedation permit until the expiration date of the permit.~~

~~(4) During the license renewal process, current general anesthesia permit holders shall convert the permit to a Deep Sedation or General Anesthesia permit.~~

~~(5) During the license renewal process, current conscious sedation permit holders shall convert the permit to a minimal pediatric sedation, moderate enteral sedation, moderate parenteral sedation, or moderate pediatric sedation permit.~~

~~(6) A dentist who currently practices enteral sedation without a permit may continue without a permit until January 1, 2012 and shall receive a Moderate Enteral Sedation permit by the submission of:~~

~~(a) Twenty-four (24) hours of didactic education plus twenty (20) sedation records documenting their experience; and~~

~~(b) Satisfactory completion of an on-site inspection as outlined in Section 14 of this administrative regulation.~~

~~Section 17. Issuance and Expiration of Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation or General Anesthesia Permits.~~

~~(1) Once an applicant has met the qualifications for obtaining a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation or General Anesthesia permit the board shall issue a permit in sequential numerical order.~~

~~(2) Each permit issued under this administrative regulation shall expire on the same date as the permit holder's license to practice dentistry.~~

~~Section 18. Renewal of Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, and Deep Sedation or General Anesthesia Permits. An individual desiring renewal of an active Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, and Deep Sedation or General Anesthesia permits shall:~~

~~(1) Submit a completed and signed Application for Renewal of Sedation or Anesthesia Permit;~~

~~(2) Pay the fee required by 201 KAR 8:520; and~~

~~(3) Provide evidence to the board that the applicant meets the continuing education requirements outlined in Section 19 of this administrative regulation.~~]

Section 12. Continuing Education Requirements for Renewal of a Permit. A qualified dentist applying for renewal of an active permit to administer moderate or deep sedation or general anesthesia shall:

(1) Complete at least four (4) hours of clinical continuing education related to sedation or anesthesia in a classroom setting during the two (2) year term of the permit; and

(2) Maintain ACLS or PALS certification.[~~Section 19. Continuing Education Requirements for Renewal of a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation or General Anesthesia Permit.~~

~~(1) An individual desiring renewal of an active Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, or Moderate Pediatric Sedation permit shall:~~

~~(a) Complete at least six (6) hours of clinical continuing education related to sedation or anesthesia in a classroom setting that includes hands-on airway management during the two (2) year term of the permit; or~~

~~(b) Maintain ACLS or PALS certification.~~

~~(2) An individual desiring renewal of an active Deep Sedation or General Anesthesia permit shall:~~

~~(a) Complete not less than four (4) hours of on-sight clinical continuing education related to sedation or anesthesia during the two (2) year term of the permit; and~~

~~(b) Maintain ACLS or PALS certification.~~

~~(3) Continuing education required by this administrative regulation shall:~~

~~(a) Not be used to satisfy other continuing education requirements; and~~

~~(b) Be in addition to other continuing education requirements of 201 KAR 8:532.~~

~~Section 20. Facilities Inspected Prior to February 1, 2011. A facility owner or operator desiring to obtain an Anesthesia and Sedation Facility Certificate for a facility which passed an inspection by the board prior to February 1, 2011 shall provide proof to the board of having passed a facility inspection for the purpose of issuing a conscious sedation or general anesthesia.~~

~~Section 21. Issuance of an Anesthesia and Sedation Facility Certificate. Once an applicant has met the qualifications for obtaining an Anesthesia and Sedation Facility Certificate the board shall issue a certificate in sequential numerical order.~~

~~Section 22. Administration by a Physician Anesthesiologist, Dentist, or Certified Registered Nurse Anesthetist at the Facility of a Treating Dentist.~~

~~(1) A treating dentist may allow at his or her dental facility, administration of sedation or anesthesia by a:~~

~~(a) Kentucky-licensed physician anesthesiologist or a Kentucky-licensed Certified Registered Nurse Anesthetist; or~~

~~(b) Dentist who holds an anesthesia and sedation permit.~~

~~(2) Administration by an individual listed in subsection (1)(a) of this section shall:~~

~~(a) Comply with this administrative regulation; and~~

~~(b) Not require board review.~~

~~(3) Nothing in this section shall preclude a dentist from working with a Kentucky-licensed physician anesthesiologist or a Kentucky-licensed Certified Registered Nurse Anesthetist in an ambulatory care center or hospital.~~]

Section 13[~~23~~]. Morbidity and Mortality Incident Reports. (1) A dentist shall report to the board, in writing, any death caused by or resulting from the dentist's administration of minimal sedation, moderate sedation, deep sedation, or general anesthesia within seven (7) days after its occurrence.

(2) A dentist shall report to the board, in writing, any incident that resulted in hospital in-patient admission or emergency room visit caused by or resulting from the dentist's administration of minimal sedation, moderate sedation, deep sedation, or general anesthesia within thirty (30) days after its occurrence.

(3) The written report to the board required in subsections (1) and (2) of this section shall include:

(a) The date of the incident;

(b) The name, age, and address of the patient;

(c) The patient's original complete dental records;

(d) The name and permit[~~license~~] number of the dentist[~~licensee~~] and the name and address of all other persons present during the incident;

(e) The address where the incident took place;

(f) The preoperative physical condition of the patient;

(g) The type of anesthesia and dosages of drugs administered to the patient;

(h) The techniques used in administering the drugs;

(i) Any adverse occurrence including:

1. The patient's signs and symptoms;

2. The treatment instituted in response to adverse occurrences;

3. The patient's response to the treatment; and

4. The patient's condition on termination of any procedures undertaken; and

(j) A narrative description of the incident including approximate times and evolution of symptoms.

(4) The duties outlined in this section shall apply to every dentist who administers any type of sedation or anesthesia.

Section 14[~~24~~]. Registered Dental Assistant Duties permitted when working with Sedation Permit holders. A registered dental assistant working with a qualified dentist administering sedation or anesthesia under this administrative regulation may, under direct supervision:

(1) Apply noninvasive monitors on the patient;

(2) Perform continuous observation of patients and noninvasive monitors appropriate to the level of sedation, during the pre-operative, intra-operative and post-operative (recovery) phases of treatment;

(3) Report monitoring parameters to the operating dentist on a periodic basis and when changes in monitored parameters occur;

(4) Record vital sign measurements in the sedation record;

(5) Establish and remove intravenous lines if the registered dental assistant has completed training in intravenous access;

(6) Assist in the management of a patient emergency; and

(7) Administer medications into an existing intravenous line upon the verbal order and direct supervision of a qualified dentist under this regulation.

Section 15. Administration by an Independently Practicing Qualified Anesthesia Provider. (1) An operating dentist may permit the administration of sedation or anesthesia by a:

(a) Kentucky-licensed independently practicing qualified anesthesia provider; or

(b) Kentucky-licensed dentist qualified to administer sedation or anesthesia.

(2) The administration of anesthesia or sedation by an individual listed in subsection (1) of this section shall:

(a) Comply with the requirements of this administrative regulation; and

(b) Not require board review prior to the administration of sedation or anesthesia.

(3) Nothing in this section shall preclude a dentist from working with a Kentucky-licensed independently practicing qualified anesthesia provider to provide care in an ambulatory care center or hospital.[~~:~~

~~(1) A registered dental assistant working with Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation or General Anesthesia permit holders may, under direct supervision:~~

~~(a) Apply noninvasive monitors;~~

~~(b) Perform continuous observation of patients and noninvasive monitors appropriate to the level of sedation, during the pre-operative, intra-operative and post-operative (recovery) phases of treatment;~~

~~(c) Report monitoring parameters to the operating dentist on a periodic basis and when changes in monitored parameters occur;~~

~~(d) Record vital sign measurements in the sedation record; and~~

~~(e) Remove IV lines (Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation or General Anesthesia Permit holders only).~~

~~(2) A registered dental assistant working with Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation or General Anesthesia Permit holders, may under direct supervision assist in the management of emergencies.~~

~~(3) A registered dental assistant working with Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation or General Anesthesia Permit holders may, under direct supervision:~~

~~(a) Administer medications into an existing IV line upon the verbal order and direct supervision of a dentist with a Moderate Parenteral Sedation, Moderate Pediatric or Deep Sedation or General Anesthesia permit; and~~

~~(b) Establish an IV line under direct supervision if they have completed a course approved by the Board of Dentistry in intravenous access.~~]

Section 16[~~25~~]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Sedation or Anesthesia Permit", February 2011;

(b) "Application for Sedation or Anesthesia Facility Certificate", February 2011; and

(c) "Sedation or[~~of~~] Anesthesia Permit Location Notification Form", February 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at http://dentistry.ky.gov.

JEFF ALLEN, Executive Director

APPROVED BY AGENCY: November 13, 2019

FILED WITH LRC: November 14, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this Amendment shall be held on January 24,

2020 at 10:00am, Eastern Time at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, 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 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 Amendment. 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 Amendment. Written comments shall be accepted through January 31, 2020. Send written notification of intent to be heard at the public hearing, or written comments on the proposed Amendment to the contact person below.

CONTACT PERSON: Jeff Allen, Executive Director, Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email jeffrey.allen@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeff Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: establishes requirements for permits to perform sedation or anesthesia.

(b) The necessity of this administrative regulation: KRS 313.035(1) requires the board to promulgate administrative regulations related to anesthesia and sedation permits

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes requirements for permits to perform sedation or anesthesia.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for permits to perform sedation or anesthesia in conformity with its authorizing 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: This amendment updates the requirements for permits to perform sedation or anesthesia.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to bring the administrative regulation up-to-date with the current legal and regulatory requirements and best practices for permits to perform sedation or anesthesia.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates the requirements for permits to perform sedation or anesthesia in conformity with its authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendment ensures that the requirements for permits to perform sedation or anesthesia are up-to-date in compliance with applicable law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will primarily affect the approximately three thousand prescribing dentists licensed in Kentucky and any individually qualified anesthesia providers who provide services to patients in cooperating with an operating dentist. Patients who are administered sedation or anesthesia by a Kentucky licensed dentist may also 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 an amendment, including:

(a) List the actions that each of the related entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will be required to administer sedation or anesthesia in accordance with applicable law and administrative regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be accrued as a result of the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will result in a healthier patient population and the avoidance of potentially costly violations of applicable law and administrative regulations.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Not applicable.

(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 established any fees or directly or indirectly increased any fees: No.

(9) TIERING: Is tiering applied? No; this amendment impacts all similarly situated practitioners equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 313.035.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No cost.

(d) How much will it cost to administer this program for subsequent years? No cost.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other explanation: Not applicable.

**ENERGY AND ENVIRONMENT CABINET**
**Department for Environmental Protection**
**Division for Air Quality**
**(Amendment)**

**401 KAR 52:100. Public, affected state, and U.S. EPA review.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Part 2, Part 51, Part 70, 42 U.S.C. 7410, 7661-7661f

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, [~~40 C.F.R. Parts 51, 70,~~] 42 U.S.C. 7410, 7661-7661f

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the[~~requires the Environmental and Public Protection~~] Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes the procedures used by the

Cabinet to provide for the review of federally-enforceable permits by the public, affected states, and the U.S. EPA.

Section 1. Applicability. This administrative regulation shall apply to the permit actions established[~~specified~~] in 401 KAR 52:020 and 401 KAR 52:030 that require public, affected state, and U.S. EPA review.

Section 2. Public Comment Period. (1) For permit actions that require public review, the cabinet shall:

(a) Provide a minimum of thirty (30) days for public comment; and

(b) Prepare a response to the comments received during the comment period.

(2) The comment period:

(a) Shall begin on the date the public notice is posted on the cabinet Web site at https://eec.ky.gov[~~published in the newspaper~~]; and

(b) Shall end thirty (30) days after the date the public notice is posted on the cabinet Web site at https://eec.ky.gov[~~publication date~~].

(3) The Cabinet shall consider:

(a) All written comments received during the public comment period;

(b) Comments received in alternate format to accommodate persons with disabilities; and

(c) The permit applicant's written response concerning the public comments, if received not later than ten (10) days after the close of the public comment period.

(4) The Cabinet shall keep a record of the commentors and issues raised during the public comment period and shall make this record available, upon request, to the public and the U.S. EPA.

Section 3. Public Hearing. (1) A public hearing shall be held if the cabinet determines that:

(a) On the basis of written requests received, material issues have been raised concerning the terms and conditions of the permit; or

(b) The permit action is of significant interest to the public.

(2) A request for a public hearing shall not require an extension of the public comment period; however, the cabinet may allow additional time after the close of a public hearing for public hearing participants to submit their comments in writing.

(3) If a public hearing is held, the cabinet shall:

(a) Provide public notice on the cabinet Web site at https://eec.ky.gov, at least thirty (30) days prior to the scheduled public hearing date; and

(b) Designate a presiding officer, who shall be responsible for the scheduling and orderly conduct of the public hearing.

(4) Any person may submit statements or data during the public hearing concerning the permit action.

(5) The Cabinet may:

(a) Set reasonable limits on the time allowed for oral statements; and

(b) Require that statements be submitted in writing.

(6) The Cabinet shall:

(a) Consider all comments received at the public hearing, including comments received in alternate format to accommodate persons with disabilities;

(b) Keep a record of the participants and issues raised at the public hearing and make this record available, upon request, to the public and the U.S. EPA; and

(c) Make available to the public at a reasonable reproduction cost;

1. A tape recording or written transcript of the public hearing; and

2. If requested, a written transcript in large type or Braille.

Section 4. Public Notice. (1) The Cabinet shall provide public notice of a public comment period and any scheduled public hearing on the cabinet Web site at https://eec.ky.gov. This shall be the cabinet's consistent method of public notice.

(2)[~~by prominent publication in the newspaper having the largest general circulation in the area where a facility is applying for a permit.~~

~~(2) The newspaper publication may be a paid advertisement, legal notice, or other appropriate format as determined by the cabinet.~~

~~(3)~~] The Cabinet may provide additional notice to the public through other methods, including newspapers, newsletters, and press releases.

Section 5. Information Included in Public Notice. The public notice shall include the following information:

(1) Contact name and address of the Energy and Environment[~~Environmental and Public Protection~~] Cabinet, Department for[~~of~~] Environmental Protection, Division for Air Quality;

(2) Name and address of the permit applicant and, if different, the name and address of the facility;

(3) A brief description of the business conducted at the facility and the activity involved in the permit action;

(4) A brief description of the comment procedures, including how to request a public hearing;

(5) Date, time, and place of the public hearing, if one (1) has been scheduled;

(6) The end date of the public comment period;

(7) The end date of the U.S. EPA's review period;

(8) Reference to the dates of previous public notices relating to the permit;

(9) Description of any emission change involved in a permit revision;

(10) For permits subject to review under 401 KAR 51:017, the degree of increment consumption expected to occur; and

(11) Name, address, and telephone number where interested persons may obtain the following information:

(a) Copies of the draft permit or permit revision;

(b) Relevant supporting material, including permit applications, permits, compliance plans, and monitoring and compliance certification reports, except for confidential business information pursuant to 40 C.F.R. Part 2 and 400 KAR 1:060; and

(c) Other materials available to the cabinet that are relevant to the permit decision.

Section 6. Distribution of Public Notice. Copies of the public notice shall be distributed as established[~~specified~~] in this section. (1) For permit actions[~~that are~~] subject to review under 401 KAR 51:017 or 51:052, the public notice shall be sent to:

(a) The permit applicant;

(b) The administrator of the U.S. EPA, through the appropriate regional office;

(c) Affected states;

(d) All persons on the mailing list established[~~specified~~] in Section 7 of this administrative regulation; and

(e) The officials and agencies having authority over the area where the source will be located, as follows:

1. Local air pollution control agencies;

2. The chief executive of the city and county;

3. Any comprehensive regional land use planning agency; and

4. Federal land manager or Indian governing body whose land may be affected by the emissions from the proposed source.

(2) For permit actions at a major source that are not subject to review under 401 KAR 51:017 or 401 KAR 51:052, the public notice shall be sent to:

(a) The permit applicant;

(b) The administrator of the U.S. EPA, through the appropriate regional office;

(c) Affected states; and

(d) All persons on the mailing list established[~~specified~~] in Section 7 of this administrative regulation.

(3) For permit actions at a synthetic minor or conditional major source, notice shall be sent to:

(a) The permit applicant;

(b) The administrator of the U.S. EPA, through the appropriate regional office; and

(c) All persons on the mailing list established[~~specified~~] in Section 7 of this administrative regulation.

Section 7. Mailing List. (1) The Cabinet shall compile and maintain a mailing list of persons who request to be notified of permit actions.

(2) The Cabinet may:

(a) Notify the public of the opportunity to be on the list on the cabinet Web site at https://eec.ky.gov[~~through periodic publication in the public press, state-funded publications, or state law journals~~]; and

(b) Delete from the list persons who fail to show continued interest in receiving notice.

Section 8. Public Inspection of Documents. (1) During the public comment period, the Cabinet shall make available for public inspection all information, except that which is confidential, contained in the:

(a) Permit application;

(b) Draft permit; and

(c) Supporting materials.

(2) The information shall be made available at:

(a) The[~~main office of the~~] Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601; and

(b) The Division for Air Quality Regional Office[~~Regional Office of the Division for Air Quality~~] having jurisdiction over the source[~~; and~~

~~(c)The local public library or office of the county clerk in the county or counties where the source is located~~].

(3) The draft permit shall also be posted, for the duration of the public comment period, on the internet at https://eec.ky.gov[~~For general permits, the information specified in subsection (1) of this section shall be made available in at least one (1) location of the cabinet's discretion~~].

Section 9. Affected States Review. Except as provided in subsection (3) of this section, for permit actions that require affected state review, the cabinet shall provide the draft permit or permit revision to affected states at the same time or before notice of the permit action is provided to the general public. (1) The Cabinet may accept a recommendation made by an affected state if the recommendation:

(a) Is received during the public comment period established[~~specified~~] in Section 2 of this administrative regulation;

(b) Is applicable to the permit action; and

(c) Does not conflict with the requirements of Kentucky Revised Statutes or 401 KAR Chapters 50 to 65.

(2) If the Cabinet does not accept a recommendation made by an affected state, the cabinet shall provide a written notice to the affected state and the U.S. EPA that:

(a) Gives the reason for not accepting the recommendation; and

(b) Is submitted to the state no later than the date the proposed permit is submitted to the U.S. EPA.

(3) For a minor permit revision at a major source, the Cabinet shall:

(a)[~~Shall~~] Provide notice to affected states with a brief description of the requested revision within five (5) workdays after a complete permit application is received; and

(b) After submittal of a proposed minor permit revision to the U.S. EPA,[~~the cabinet~~]:

1.[~~Shall~~] Notify the affected state and the U.S. EPA if a recommendation is not accepted; and

2.[~~Shall~~] Provide the reason for not accepting the recommendation.

Section 10. U.S. EPA Review. (1) For permit actions that require U.S. EPA review, the Cabinet shall not issue a final permit, permit revision, or permit renewal until the U.S. EPA:

(a) Has had an opportunity to review and comment on the permit action and has not objected to issuance of the permit within the forty-five (45) day period for an objection; or

(b) Waives its right of review.

(2) The Cabinet shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to applicable statutory or regulatory provisions, and shall send the statement to the U.S. EPA and to any other person who requests it.

(3) The Cabinet shall provide the U.S. EPA with copies of the:

(a) Permit application, including attachments;

(b) Other permit-related information such as public comments, settlements, and decisions from permit appeals;

(c) Proposed permit or proposed permit revision; and

(d) Final permit or final permit revision.

(4) On a case-by-case basis and with prior U.S. EPA approval, the Cabinet may submit a summary form and the relevant portion of the permit application and compliance plan in lieu of the complete application and compliance plan.

(5) On a case-by-case basis and with prior U.S. EPA approval, the Cabinet may submit the draft permit or permit revision in lieu of a proposed permit or permit revision. For these submittals:

(a) The Cabinet shall provide the U.S. EPA with:

1. The permit application, draft permit or permit revision, and supporting information no later than the first day of the public comment period; and

2. All timely submitted public comments after the close of the public comment period;

(b) The draft permit shall become the final permit or permit revision at the end of the U.S. EPA's forty-five (45) day review, unless:

1. A substantial change is made in the permit or permit revision following the public comment period; or

2. The U.S. EPA files an objection to the permit or permit revision.

(c) If a substantial change is made in the draft permit or permit revision, the Cabinet shall make appropriate revisions and submit a proposed permit or permit revision to the U.S. EPA for another forty-five (45) day review period.

(6) If the U.S. EPA objects to the issuance of a permit or permit revision, the U.S. EPA shall:

(a) File a statement of objection, in writing, within forty-five (45) days after receiving the permit or permit revision and supporting information;

(b) Include in the statement the reasons for the objection and a description of the permit changes needed to resolve the objection; and

(c) Provide the permit applicant with a copy of the filed objection.

(7) After an objection is filed, the cabinet shall make the appropriate revisions and submit a new proposed permit or permit revision to the U.S. EPA within ninety (90) days after the objection is filed.

(8) If the Cabinet does not submit a revised proposed permit or permit revision within ninety (90) days after an objection is filed, the U.S. EPA may issue or deny the permit.

(9) If the U.S. EPA does not object to the issuance of a permit, a citizen may petition the U.S. EPA to file an objection.

(a) The U.S. EPA shall file the citizen objection if the petition is:

1. Made within sixty (60) days following the end of the U.S. EPA's forty-five (45) day review period; and

2. Based only on objections raised with reasonable specificity during the public comment period, unless:

a. The petitioner can demonstrate that it was impractical to raise the objection within the public comment period, or

b. The grounds for objection arose after the end of the public comment period.

(b) If the U.S. EPA objects to a permit action as a result of a petition filed, the Cabinet shall not issue the permit until the U.S. EPA objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five (45) day review period and prior to the U.S. EPA objection.

(c) If the Cabinet issues a permit or permit revision prior to receipt of a U.S. EPA objection:

1. The U.S. EPA may modify, terminate, or revoke the permit consistent with the procedures in 40 C.F.R. 70.7(g)(4) and (5);

2. The Cabinet shall, upon receipt of the U.S. EPA objection,[~~then~~] issue a revised permit that satisfies the U.S. EPA objection; and

3. The source shall not be in violation for failing to submit a complete and timely application.

(10) To the extent possible, all information provided to the U.S. EPA shall be submitted in an electronic format that is compatible with the U.S. EPA's national database management system.

(11) The Cabinet shall keep records of all information submitted to the U.S. EPA for a period of five (5) years.

(12)(a) If the Cabinet is authorized by the source to submit confidential information to the U.S. EPA, a claim of confidentiality shall accompany the relevant information.

(b) If the Cabinet is not authorized by the source to submit confidential information to the U.S. EPA, the source shall submit the confidential information directly to the U.S. EPA with a claim of confidentiality.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 14, 2019

FILED WITH LRC: November 14, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation and the State Implementation Plan (SIP) Revision package for the amended administrative regulation will be held on January 30, 2020 at 10:00 a.m. (Eastern Time) in Room 214 at 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 22, 2020 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 shall be cancelled, and notification of the cancellation shall be posted at https://eec.ky.gov/Environmental-Protection/Air/Pages/Public-Notices.aspx. 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 January 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. This administrative regulation is contained in Kentucky's SIP approved by US EPA. The SIP revision package for the amended regulation will be submitted to US EPA once the proposed amendments to this administrative regulation become effective. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Matthew Dollar, Environmental Scientist, Division for Air Quality, 300 Sower Blvd., Frankfort, Kentucky 40601, phone (502) 782-6468, fax (502) 564-4245, email matthew.dollar@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matthew Dollar

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures used by the Cabinet to provide for the review of federally-enforceable permits by the public, affected states, and the U.S. EPA.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the Cabinet to retain delegation of authority for the implementation and enforcement of the standards established in 40 C.F.R. Parts 51 and 70 related to public participation in federally-enforceable permit proceedings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation conforms to the statute by establishing the review procedures for permit actions by the public, affected states, and the U.S. EPA.

(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 statues by enabling the Cabinet to continue to implement requirements consistent with the federal standards for review of permit actions by the public, affected states, and the U.S. EPA.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will establish alternative means of publication for public notices, public hearings, and public comment periods in relation to permit proceedings.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to be consistent with 42 U.S.C. 7661a(b)(6) and 42 U.S.C. 7661d.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by adopting procedures consistent with 42 U.S.C. 7661a(b)(6) and 42 U.S.C. 7661d.

(d) How the amendment will assist in the effective administration of statutes: The amendment adopts procedures to be consistent with the requirements of 40 C.F.R. Part 70.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation contains the procedures to be used by the Cabinet when providing an opportunity for federally-enforceable permits and permit revisions to be reviewed by the public, affected states, and the U.S. EPA. Approximately 117 federally-enforceable permits are submitted for review each 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: The public, affected states, and U.S. EPA will be able to access documentation related to permit proceedings on the internet. Using the internet will provide constant access to these documents.

(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 cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the Cabinet will decrease expenditures associated with publishing public notices in newspapers and at local libraries or county clerk offices. The public will have access to information on the internet from home.

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

(a) Initially: The Cabinet will not incur any additional costs for the implementation of this proposed amendment to this administrative regulation initially.

(b) On a continuing basis: The Cabinet will not incur any additional costs for the implementation of this proposed amendment to this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet's current operating budget will be used for the implementation and enforcement of the proposed amendment to this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. The administrative regulation establishes separate public notice procedures for different permit actions.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is contained in 40 C.F.R. Parts 51

and 70, pursuant to 42 U.S.C. 7410, 7661-7661f.

2. State compliance standards. This administrative regulation establishes procedures for federally-enforceable permit actions to be reviewed by the public, affected states, and the U.S. EPA.

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Part 70 requires public notice on all permit proceedings, significant modifications, and renewals. These notices are to include an opportunity for public comment and a public hearing on the draft permit. 40 C.F.R. Part 70 also includes minimum timeframes for public comment and response to comment.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The proposed amendment to the administrative regulation will not impose stricter requirements or additional or different responsibilities or requirements than the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards or additional or different responsibilities or requirements are not imposed.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division for Air Quality will continue to provide for public notice of federally-enforceable permit actions in accordance with this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation.

KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Parts 51, 70, 42 U.S.C. 7410, 7661-7661f

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed amendment to the administrative regulation will not generate revenue in the first year. However, public notice on the internet instead of a newspaper is expected to save the agency approximately $30,000 each year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed amendment to the administrative regulation will not generate revenue in subsequent years. However, public notice on the internet instead of a newspaper is expected to save the agency approximately $30,000 each year.

(c) How much will it cost to administer this program for the first year? The Cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The Cabinet's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

**ENERGY AND ENVIRONMENT CABINET**
**Department for Environmental Protection**
**Division for Air Quality**
**(Amendment)**

**401 KAR 63:010. Fugitive emissions.**

RELATES TO: KRS[~~Chapter~~] 224.20, 224.10-100, 42 U.S.C. 7407

STATUTORY AUTHORITY: KRS 224.10-100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the[~~requires the Environmental and Public Protection~~] Cabinet to promulgate[~~prescribe~~] administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes requirements[~~provides~~] for the control of fugitive emissions.

Section 1.[~~Applicability. The provisions of this administrative regulation are applicable to each affected facility as defined in Section 2 of this administrative regulation.~~

~~Section 2.~~] Definitions. Except as defined in this section, terms used in this administrative regulation[~~not defined herein~~] shall have the meaning given to them in 401 KAR 50:010. (1) "Affected facility" means an apparatus, operation, or road which emits or may emit fugitive emissions[~~provided that the fugitive emissions from such facility are~~] not elsewhere subject to an opacity standard within the administrative regulations of the Division for Air Quality.

(2) "Classification date" means June 29, 1979.

(3) "Emission time" means the accumulated amount of time that emissions are visible during the observation period.

(4) "Fugitive emissions" means the emissions of any air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(5) "Observation period" means the accumulated time period during which observations are conducted.

(6)[~~(3)~~] "Open air" means the air outside buildings, structures, and equipment.[~~(4) "Classification date" means June 29, 1979.~~]

Section 2. Applicability. The provisions of this administrative regulation shall be applicable to each affected facility as defined in Section 1 of this administrative regulation.

Section 3. Standards for Fugitive Emissions. (1) A[~~No~~] person shall not cause, suffer, or allow any material to be handled, processed, transported, or stored; a building or its appurtenances to be constructed, altered, repaired, or demolished;[~~,~~] or a road to be used without taking reasonable precaution to prevent particulate matter from becoming airborne. Such reasonable precautions shall include, when applicable[~~, but not be limited to the following~~]:

(a) Use, where possible, of water or suitable chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads or the clearing of land;

(b) Application and maintenance of asphalt, oil, water, or suitable chemicals on roads, materials stockpiles, and other surfaces which can create airborne dusts;

(c) Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials, or the use of water sprays or other measures to suppress the dust emissions during handling. Adequate containment methods shall be employed during sandblasting or other similar operations;

(d) Covering, at all times when in motion, open bodied trucks transporting materials likely to become airborne;

(e) The maintenance of paved roadways in a clean condition; or

(f) The prompt removal of earth or other material from a paved street which earth or other material has been transported thereto by trucking or earth moving equipment or erosion by water.

(2) A[~~No~~] person shall not cause, suffer, or allow[~~permit the discharge of~~] visible fugitive dust emissions beyond the lot line of the property on which the emissions originate, as determined by Reference Method 22 of Appendix A in 40 C.F.R. Part 60, for:

(a) More than five (5) minutes of emission time during any sixty

(60) minute observation period; or

(b) More than twenty (20) minutes of emission time during any twenty-four (24) hour period.

(3) When dust, fumes, gases, mist, odorous matter, vapors, or any combination thereof escape from a building or equipment in such a manner and amount as to cause a nuisance or to violate any administrative regulation, the secretary may order that the building or equipment in which processing, handling, and storage are done be tightly closed and ventilated in such a way that all air and gases and air or gas-borne material leaving the building or equipment are treated by removal or destruction of air contaminants before discharge to the open air.

(4) The provisions of this section[~~this administrative regulation~~] shall not apply to agricultural practices, such as tilling of land or application of fertilizers, which take place on a farm. Agricultural practices, such as tilling of land or application of fertilizers, which take place on a farm, shall be conducted in such a manner as to not create a nuisance to others residing in the area

Section 4. Additional Requirements. In addition to the requirements of Section 3 of this administrative regulation, the following shall apply:

(1) At all times when in motion, open bodied trucks, operating outside company property, transporting materials likely to become airborne shall be covered.

(2)[~~Agricultural practices, such as tilling of land or application of fertilizers, which take place on a farm shall be conducted in such a manner as to not create a nuisance to others residing in the area. Agricultural practices are not subject to the opacity standard.~~

~~(3)~~] The provisions of Section 3(1) and (2) of this administrative regulation shall not be applicable to temporary blasting or construction operations.

(3) A person[~~(4) No one~~] shall not cause, suffer, or allow earth or other material being transported by truck or earth moving equipment to be deposited onto a paved street or roadway.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 29, 2019

FILED WITH LRC: November 6, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on January 30, 2020 at 10:00 a.m. (Local Time) in Conference Room 214 at 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 24, 2020, 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 shall be cancelled, and notification of the cancellation shall be posted at http://air.ky.gov/pages/publicnoticesandhearings.aspx. 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 January 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. This administrative regulation is contained in Kentucky's State Implementation Plan approved by US EPA. The SIP revision package for the amended regulation will be submitted to US EPA once the proposed amendments to this administrative regulation become effective. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Lisa Jones, Environmental Scientist III, Division for Air Quality, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 782-1288, fax (502) 564-4245, email Lisa.C.Jones@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Jones

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the control of fugitive emissions. Fugitive dust is dust that is not emitted from definable point sources. Sources include open fields, roadways and storage piles.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because it controls fugitive dust from interfering with public health and safety.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Energy and Environment Cabinet (Cabinet) to promulgate administrative regulations for the prevention, abatement, and control of air pollution. The air pollution controlled, prevented, and abated by this regulation is fugitive dust emissions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for the control of fugitive emissions. This administrative regulation applies to any affected facility that emits or may emit fugitive emissions not elsewhere subject to an opacity standard within the Division for Air Quality regulations. This administrative regulation provides certainty by including a method of demonstrating compliance.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment to this administrative regulation will establish a compliance reference method, including a specified emission time and observation period, as defined by the administrative regulation, for emissions that go beyond the lot line of the property on which the emissions originate. The proposed amendment also provides clarifying language and format changes pursuant to KRS 13A.

(b) The necessity of the amendment to this administrative regulation: The proposed amendment to this administrative regulation establishes criteria for compliance through use of EPA Reference Method 22 of Appendix A in 40 C.F.R. Part 60 ('Reference Method 22"). Use of the reference method will provide a standard measurement criteria for the visual determination of fugitive emissions.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment to this administrative regulation conforms to the content of the authorizing statutes by establishing requirements for control of air pollution caused by fugitive emissions.

(d) How the amendment will assist in the effective administration of the statutes: EPA Reference Method 22 is a standardized compliance test and no certification is required for use. Cabinet inspectors and regulated entities will be able to use a standardized reference method to determine if the fugitive dust emissions are occurring at a specified emissions time and during a specified observation period.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The number and type of entities affected by this administrative regulation depends on those entities that undertake activities that would cause or contribute to fugitive dust emissions. However, fugitive emissions subject to an opacity standard within the administrative regulations of the Division for Air Quality are excluded from compliance with this administrative regulation. Certain agricultural practices are excluded from the standards for fugitive emissions contained in Section 3 of the proposed administrative regulation. Temporary blasting or construction operations are also excluded from certain provisions of Section 3 of the proposed 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: Regulated entities will have to control fugitive dust emissions by taking reasonable precautions to prevent particulate matter from becoming airborne. However, this requirement already exists and is not being amended.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): The cost associated with the proposed amendment to this administrative regulation is variable based on the specific activity and type of material that is causing the fugitive dust emissions. The reasonable precautions listed in the proposed amendment are also expected be of reasonable cost to an affected facility.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with standards set forth by the proposed administrative regulation will reduce impairment to public health and secondary costs of cleaning homes, vehicles, and other objects resulting from fugitive dust emissions from an affected facility.

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

(a) Initially: The Cabinet will not incur any additional costs for the implementation of the proposed amendment to this administrative regulation.

(b) On a continuing basis: The Cabinet will not incur any additional costs for the implementation of the proposed amendment to this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet's current operating budget will be used to implement and enforce the proposed amendment to this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The proposed amendment to this administrative regulation will not establish, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering is not applicable because this regulation applies all requirements equally to all affected facilities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The State and local governments impacted by this administrative regulation depends on those entities that undertake activities that would cause or contribute to fugitive dust emissions. However, fugitive emissions subject to an opacity standard within the administrative regulations of the Division for Air Quality are excluded from compliance with this administrative regulation. Certain agricultural practices are excluded from the standards for fugitive emissions contained in Section 3 of the proposed administrative regulation. Temporary blasting or construction operations are also excluded from certain provisions of Section 3 of the proposed administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed amendment to this administrative regulation will not generate revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed amendment to this administrative regulation will not generate revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? The Division for Air Quality's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The Division for Air Quality's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate for this administrative regulation is 42 U.S.C. 7407.

2. State compliance standards. This administrative regulation establishes requirements for the control of fugitive emissions.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 7407 designates each state with the primary responsibility for assuring air quality within the entire geographic area of the state.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, the administrative regulation does not impose stricter requirements or additional or different responsibilities than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards, or additional or different responsibilities or requirements are not imposed.

**JUSTICE AND PUBLIC SAFETY CABINET**
**Parole Board**
**(Amendment)**

**501 KAR 1:040. [~~Conducting~~] Parole revocation hearing procedures[~~hearings~~].**

RELATES TO: KRS 439.315, 439.330(1)(e), 439.3406, 439.341, 439.346, 439.390, 439.430, 439.440, 532.043, 532.400

STATUTORY AUTHORITY: KRS 439.340(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340(3) requires the Parole Board to establish administrative regulations concerning parole revocation hearings. This administrative regulation contains the procedures for the revocation of parole, the probable cause hearing, and the issuance of parole violation warrants.

Section 1. Definitions.

(1) "Board" means the Kentucky Parole Board established in KRS 439.320.

(2) "Fact finder" means the person or entity that determines the facts at a hearing and includes the administrative law judge or the Parole Board depending on which conducts the hearing and issues findings of fact.

(2) "Parole" means parole and other forms of supervision treated like parole in that the Parole Board has the authority to revoke supervision.

(3) "Probable cause hearing" means a hearing before an administrative law judge to determine if there is probable cause that a parole violation has occurred.

Section 2. Notice of Probable Cause Hearing. Charges of a parole violation shall be initiated by a parole officer of the Department of Corrections by service of a notice of the probable cause hearing.

(1) The parole officer shall complete the following for the notice:

(a) Alleged violations;

(b) Evidence to be presented at the hearing;

(c) Witnesses upon whose statements revocation is based if

disclosure of that information will not create a risk of harm to the witness;

(d) Time;

(e) Date; and

(f) Location of hearing.

(2) The notice shall also:

(a) State the purpose of the hearing;

(b) Inform the offender of his right to:

1. Be present;

2. Speak on his own behalf; and

3. Call witnesses and present evidence in defense of the charges;

(c) Inform the offender that he may have counsel present;

(d) Inform the offender that the hearing shall not be held sooner than five (5) days after the offender is served with the notice of the hearing, unless the offender waives this time period; and

(e) Inform the offender that he may request a continuance of the hearing, if good cause is shown.

Section 3. Probable Cause Hearing Preliminary Information.

(1) Hearing date. A probable cause hearing shall not be conducted earlier than five (5) days after service of the notice of the hearing, unless this period is waived by the offender.

(2) Representation by counsel. An offender appearing at a Preliminary Revocation Hearing may be represented by counsel. The offender may have a continuance for the purpose of obtaining the presence of counsel by making a motion for this purpose. More than two (2) appearances for hearing without counsel by an offender who is capable of retaining counsel may be deemed an implicit waiver of counsel.

(3) The offender may request a continuance of the hearing from the administrative law judge for good cause.

(4) Agency representation. A duly appointed probation and parole officer of the Commonwealth of Kentucky may appear before the administrative law judge as the representative of the Department of Corrections in matters relating to the revocation of parole in the absence of an attorney, pursuant to SCR 3.700 sub-rule 3.

Section 4. Waiver of Probable Cause Hearing.

(1) Except for offenders who are less than eighteen (18) years of age, an offender charged with a violation of parole may waive the probable cause hearing by waiving his appearance before an administrative law judge.

(2) An offender shall submit the waiver in writing to the offender's Probation and Parole Officer who shall forward it to the board or its administrative law judge for approval.

(3) The waiver may be accepted at the discretion of the board or its administrative law judges.

(4) A waiver shall not be accepted unless it is found that the offender:

(a) Made the waiver:

1. Knowingly; and

2. Voluntarily; and

(b) Understands that the offender admits probable cause exists for the violations charged.

(5) Notwithstanding the submission and acceptance of a waiver of the probable cause hearing, the offender may still have a final revocation hearing.

(6) After approval of the waiver, the matter shall proceed in the same manner as if a hearing was held and probable cause determined.

(7) If an offender being supervised in another state signs a waiver of probable cause hearing in that state, the waiver shall be reviewed by an administrative law judge of the board to determine if the waiver meets the requirements of subsections (1) - (6) of this section. If the administrative law judge determines that the waiver does not comply with subsections (1) - (6) of this section, the board chair or designee shall refer the matter back to the Division of Probation and Parole and request that it take action necessary to insure compliance with this administrative regulation.

Section 5. Conduct of Probable Cause Hearing.

(1) A probable cause hearing shall be conducted by an administrative law judge who shall have control over the proceedings and the reception of evidence at the hearing.

(2) Hearing record. A probable cause hearing shall be conducted on the record. The hearing may be recorded and preserved by any means practical, including electronically, mechanically, or stenographically. If requested by the board, the record of the proceedings shall be transcribed.

(3) Hearing procedure.

(a) The administrative law judge may take judicial notice of acts of the board, including the conditions of parole, and all other matters which may be judicially noticed in the courts of this Commonwealth pursuant to KRE 201.

(b) A witness shall testify under oath, administered by the administrative law judge, and shall be available for examination by the other party or the administrative law judge, unless good cause dictates otherwise.

(c) The parole officer shall bear the burden of proof in establishing the elements of the violation.

(d) The parole officer shall present evidence first and the offender shall be given the opportunity to present evidence in defense. Any further proceedings shall be conducted at the discretion of the administrative law judge.

(3) Amend notice of hearing. The notice of the hearing may be amended at any time prior to the close of the record of the preliminary hearing, within the discretion of the administrative law judge, if a finding is made that the substantial rights of the parolee shall not be prejudiced by the amendment. If the notice is amended, a continuance of the hearing may be granted if the interest of justice so requires. Failure to object to any defect in the notice prior to the close of the hearing shall be deemed a waiver.

(4) Continuance of hearing. The probable cause hearing may be continued or recessed with further proof to be taken at any time prior to the close of the record for good cause shown. At the request of either party, the administrative law judge may, within his or her discretion, leave the record open for reception of additional evidence provided that no substantial rights are prejudiced.

Section 6. Probable Cause Determination.

(1) The administrative law judge shall make a determination whether probable cause exists to believe that the offender has committed any or all of the violations alleged in the notice of probable cause hearing.

(2) The determination shall be made from the evidence produced at the hearing and any evidence for which judicial notice is taken.

(3) The determination shall be rendered at the close of the hearing or within a reasonable time thereafter.

(4) If probable cause is not found by the administrative law judge:

(a) The offender shall continue on parole without further action by the board, if no parole violation warrant has been issued; or

(b) The matter shall be referred to the board pursuant to Section 7 of this administrative regulation for the warrant to be rescinded, if a parole violation warrant has been issued.

(5) If probable cause is found by the administrative law judge, the matter shall be referred to the board for issuance of a parole violation warrant, if one has not been issued, and a final revocation hearing.

(6) The administrative law judge shall not consider matters of bail or any other form of release from custody for an offender accused of parole or probation violations, in the absence of any specific statutory authorization.

(7) Written decision. The administrative law judge shall issue a written decision stating the determination concerning probable cause, the reasons for the determination, and the evidence relied upon. The decision shall be sent to the parole officer and the offender or counsel if represented at the probable cause hearing.

Section 7. Referral for Parole Violation Warrant.

(1) If probable cause is determined to exist, the case shall be referred to the board for issuance of a parole violation warrant and a final revocation hearing.

(2) New criminal conviction.

(a) If the alleged violation of parole, as set forth in the notice of probable cause hearing, is new criminal conduct which does not also constitute a technical violation of the conditions of supervision, or the conditions of parole, the case shall not be referred to the board for parole revocation consideration unless the:

1. Offender has received a conviction in a court of law;

2. Offender had pled guilty to the alleged criminal conduct;

3. Offender has made some other form of judicial admission; or

4. Criminal conduct, or a substantial part of it, was committed in the presence of a duly appointed probation and parole officer of the Commonwealth of Kentucky.

(b) Nothing in this subsection shall prevent revocation of parole for a technical violation, which also happens to partially or wholly involve criminal conduct.

Section 8. Parole Violation Warrant. Parole violation warrants shall be issued as set forth below:

(1) If a case is referred to the board by the administrative law judge under the provisions of Section 6(5) of this administrative regulation, the board chair shall issue the parole violation warrant. A vote of the board shall not be necessary.

(2) If it appears that an offender has absconded from parole supervision, it otherwise appears that a parolee is a fugitive from justice, or a parole violation warrant is necessary to effect the return of the parolee to the state of Kentucky, the board chair may issue a warrant, if the chair receives documentation from the supervising parole officer, setting forth facts sufficient to conclude there are reasonable grounds to believe that some violation has occurred, and the commissioner or his designee submits to the board a recommendation that a warrant be issued.

(3) If the offender is being supervised outside the state of Kentucky, the board chair shall determine whether to issue a parole violation warrant based upon:

(a) A written report from the supervising state setting forth facts sufficient to conclude that there are reasonable grounds to believe that a violation of parole has occurred; and

(b) The commissioner or his designee submits to the board a recommendation that a warrant be issued.

(4) The board may decline any request for a parole violation warrant made pursuant to any section of this administrative regulation except subsection (1) of this section. Any parole violation warrant, issued under any section of this administrative regulation, may be rescinded by majority vote of the board at any time.

(5) The board chair shall issue parole violation warrants for the board without a board vote.

(6) Any member of the board designated by the board chair may sign a parole violation warrant in the absence of the chair.

Section 9. Probable Cause Hearing Conducted Subsequent to Issuance of the Parole Violation Warrant or for Offenders Supervised in Another State.

(1) (a) This subsection shall not apply if a parolee is being supervised by another state and if that supervisory state held a probable cause hearing for the parolee.

(b) A probable cause hearing shall be conducted, if:

1. A parole violation warrant was issued for an offender without a probable cause hearing; and

2. The offender is apprehended or returns to the Commonwealth of Kentucky.

(c) Except as provided by paragraph (e) of this subsection, following the hearing, the offender shall be ordered returned to the appropriate institution of the Kentucky Department of Corrections for further consideration by the board if the administrative law judge finds that there is probable cause to believe that the:

1. Offender committed any of the violations contained in the warrant; and

2. Warrant was validly issued as to any of the charges contained within it.

(d) If the administrative law judge finds no probable cause, the case shall be referred to the board to withdraw the warrant and return the offender to supervision.

(e) If probable cause is found:

1. The administrative law judge shall refer the case to the board to decide whether the warrant should be exercised or withdrawn if:

a. The parole officer moves for a referral; or

b. The administrative law judge finds that there are overwhelming mitigation factors present that were not known to the board at the time of the warrant's issuance.

2. If the board decides to withdraw the warrant, the offender shall be returned to normal parole supervision, subject to any additional conditions the board may impose.

3. If the board decides to exercise the warrant, the parolee shall be ordered returned to the appropriate institution.

(2) If a probable cause hearing is held by the supervising state for an offender being supervised in another state, and the supervising state concludes as a result of the hearing that a violation has occurred:

(a) The case shall first be reviewed by an administrative law judge for the board to determine whether the proceeding held in the supervising state and the conclusions reached in the hearing comply with due process;

(b) After the review, the administrative law judge shall refer the case to the board for:

1. Issuance of a parole violation warrant as set forth in Section 7 of this administrative regulation if one has not been issued; or

2. A final hearing as set forth in Section 11 of this administrative regulation if a warrant has been issued.

Section 10. Notice of Final Revocation Hearing. The final revocation hearing process shall be initiated by service of a notice of final revocation hearing.

(1) The parole officer shall complete the following for the notice:

(a) Alleged violations;

(b) Evidence against the offender to be presented at the hearing;

(d) Time;

(e) Date; and

(f) Location of hearing.

(2) The notice shall also inform the offender that:

(a) A hearing will be conducted on the alleged violations;

(b) The standard of proof for the hearing shall be a preponderance of the evidence;

(c) The offender may call witnesses and present evidence in defense and mitigation of the charges;

(d) The offender may be entitled to have counsel present at the final revocation hearing; and

(e) If the offender wants to have counsel present at the final revocation hearing, he shall request the presence of counsel at the hearing in writing prior to the hearing date. The fact finder shall respond to his request within five (5) days of receipt.

Section 11. Final Revocation Hearing Preliminary Information.

(1) Hearing date. A final revocation hearing shall be held within thirty (30) days after the return of the parolee to a state institution. The offender may request a delay or continuance for good cause from the board.

(2) The purpose of the final revocation hearing shall be to determine if the offender's parole will be revoked.

(3) Requests to have counsel present at the final revocation hearing.

(a) A determination of whether the offender may have counsel present at the final revocation hearing shall be made on a case-by-case basis by the board within five (5) days after the request is received by the fact finder.

(b) In making this determination, the board shall consider whether the offender:

1. Has articulated a timely and colorable claim that he did not commit the alleged violation of the conditions of supervision;

2. Has articulated substantial reasons that:

a. Justify or mitigate the violation;

b. Make the revocation inappropriate; and

c. Are complex or otherwise difficult to develop or present; and

3. Appears to be capable of speaking effectively for himself.

(4) Limited request for final revocation hearing.

(a) If an offender had a final revocation hearing on or after July

5, 2018 and before October 24, 2019, the offender may request a new final revocation hearing by sending a request for a new final revocation hearing in writing to the board. The request shall include:

1. The date of the offender's probable cause hearing;

2. The date of the revocation decision; and

3. Any documentation of the revocation decision in the offender's possession.

(b) The request may be rejected without action by the board if a final revocation hearing was held on or after October 24, 2019.

Section 12. Waiver of Final Revocation Hearing.

(1) With the exception of offenders who are less than eighteen (18) years of age, an offender being held pursuant to a parole violation warrant may request to waive his final revocation hearing, after his probable cause hearing or acceptance of a waiver of the final revocation hearing.

(2) Waiver procedure.

(a) An offender shall submit the waiver in writing to the board or its fact finder for approval.

(b) The waiver may be accepted at the discretion of the board or its fact finder.

(c) A waiver shall not be accepted unless it is found that the offender:

1. Made the waiver:

a. Knowingly; and

b. Voluntarily; and

2. Understands that the offender admits the violations charged occurred.

(d) In the event that waiver of the final revocation hearing is accepted, the final decision on the revocation of the offender's parole shall be made by the board without any further proceedings.

Section 13. Conduct of Final Revocation Hearing.

(1) Hearing procedure.

(a) The charges of violations and the evidence against the offender shall be explained to offender.

(b) The offender shall then have the opportunity to present evidence in defense and mitigation of the charges.

(c) The standard of proof shall be a preponderance of the evidence.

(d) The hearing may be continued or recessed with further proof to be taken at any time prior to the close of the record for good cause shown and provided no substantial rights are prejudiced.

(e) The hearing shall be conducted on the record and may be recorded and preserved by any means practical, including electronically, mechanically, or stenographically. If requested by the Board, the record of the proceedings shall be transcribed.

(2) Written findings of fact and decision.

(a) The fact finder shall provide the offender with written findings of fact concerning the alleged violations within twenty-one (21) days of the final revocation hearing.

(b) The board chair or designee may extend the time period for good cause.

(c) The findings of fact shall include a determination of whether the fact finder:

1. Found the offender to have committed the alleged violations by a preponderance of the evidence; and

2. Recommends that parole be revoked with the evidence relied on and the reasons for recommending the revocation of parole, if the fact finder is not the board.

(d) The board shall issue a decision in writing whether parole is revoked or not:

1. Based on the findings of fact determined at the final revocation hearing; and

2. a. Adopt the recommendation of the administrative law judge; or

b. Determine to revoke or not based on its own reasoning.

(e) A copy of the decision shall be provided to the offender.[~~Preliminary Revocation Hearings. Preliminary revocation hearings shall be conducted by an administrative law judge of the Parole Board who shall have control over the proceedings and the reception of evidence at these hearings.~~

~~(1) Charges of parole violation shall be initiated by a parole officer of the Department of Corrections by service of a notice of preliminary hearing which sets forth the alleged violations. This notice may be amended at any time prior to the close of the record of the preliminary hearing, within the discretion of the administrative law judge, if a finding is made that the substantial rights of the parolee shall not be prejudiced by the amendment. A continuance of the proceeding may be granted in the event of this amendment, if the interest of justice so requires. Failure to object to any defect in the notice prior to the close of the hearing shall be deemed a waiver of this objection.~~

~~(2) Pursuant to SCR 3.700 Sub-rule 3, in the absence of an attorney to represent the Department of Corrections, Division of Probation and Parole, before the board and the administrative law judge, any duly appointed probation and parole officer of the Commonwealth of Kentucky may appear before the board or its administrative law judge as representative of the Department of Corrections in matters relating to the revocation of probation or parole.~~

~~(3) Unless the waiting period is waived by a parolee, a preliminary hearing shall not be conducted earlier than five (5) days of service of notice of the hearing. The preliminary hearing may be continued or recessed with further proof to be taken at any time prior to the close of the record for good cause shown. At the request of either party, the administrative law judge may, within his discretion, leave the record open for reception of additional evidence provided that no substantial rights are prejudiced.~~

~~(4) All preliminary revocation hearings shall be conducted on the record. The hearing may be recorded and preserved by any means practical, including electronically, mechanically, or stenographically. If requested by the board, the record of the proceedings shall be transcribed.~~

~~(5) The administrative law judges may take judicial notice of acts of the Parole Board, including the conditions of parole, and all other matters which may be judicially noticed in the courts of this Commonwealth pursuant to KRE 201. Witnesses appearing at the preliminary hearing to give testimony shall do so under oath, administered by the administrative law judge, and shall be available for examination by the other party or the administrative law judge, unless good cause dictates otherwise. The parole officer shall bear the burden of proof in establishing the elements of the violation. The parole officer shall present evidence first and the parolee shall be given the opportunity to present evidence in defense or mitigation. Any further proceedings shall be conducted at the discretion of the administrative law judge. The parolee may, within reasonable limits, present evidence solely for the purpose of mitigation of his conduct, including evidence of his mental condition. If presented, this evidence shall be subject to rebuttal by the parole officer.~~

~~(6)(a) At the close of the hearing, or within a reasonable time thereafter, the administrative law judge shall make a determination, from the evidence produced at the hearing, as well as any evidence of which judicial notice is taken, whether there exists probable cause to believe that the parolee has committed any or all of the violations alleged in the notice of preliminary hearing.~~

~~(b) Except as provided by paragraph (c) of this subsection, if probable cause is found to exist, the case shall then be referred to the Parole Board which shall then issue a parole violation warrant which shall cause the parolee to be brought before the Parole Board for a final parole revocation hearing.~~

~~(c) Notwithstanding a finding of probable cause, leniency may be granted in any form deemed appropriate by the administrative law judge if all parties agree to the leniency, and if the parolee agrees to any additional conditions of his parole as set forth by the administrative law judge after consultation with the parole officer.~~

~~(7) If the administrative law judge finds probable cause to believe that a violation of parole has been committed and the case is referred to the Parole Board for the issuance of a parole violation warrant, the administrative law judge shall issue a written decision and may issue a recommendation, along with reasons in support of that recommendation, as to what action should be taken concerning the parolee's parole, including recommendations concerning the terms and conditions of any future parole. This recommendation shall be advisory only and shall not be binding on the board. If the administrative law judge finds that there exists substantial mitigating~~

~~factors or a viable alternative to reincarceration, the administrative law judge may recommend that the parolee not be returned as a parole violator. If the administrative law judge makes that finding and recommendation, the case shall be referred to the Parole Board for their vote on the issuance of the parole violation warrant.~~

~~(8) In preliminary revocation hearings conducted on probation cases or on cases in which the releasing authority is other than the Kentucky Parole Board, upon a finding of probable cause, the matter may be referred to the releasing authority for further revocation consideration, or leniency may be considered on the same basis as a case in which the Kentucky Parole Board is the releasing authority.~~

~~(9) If the alleged violation of parole, as set forth in the notice of preliminary hearing, is new criminal conduct which does not also constitute a technical violation of the conditions of supervision, or the conditions of parole, the case shall not be referred to the board for parole revocation consideration unless it is shown that the parolee has received a conviction in a court of law or there exists some other form of judicial admission, such as a plea of guilty, concerning the alleged criminal conduct, or it is found that the criminal conduct, or a substantial part of it, was committed in the presence of a duly appointed probation and parole officer of the Commonwealth of Kentucky. Nothing in this subsection shall prevent revocation of parole for a technical violation, which also happens to partially or wholly involve criminal conduct.~~

~~(10) Any party appearing before an administrative law judge of the Kentucky Parole Board may be represented by counsel if he so desires. The party may have, upon motion thereof, a continuance for the purpose of obtaining the presence of counsel; except that chronic appearance for hearing without counsel by a parolee who is capable of retaining counsel may be deemed an implicit waiver of counsel.~~

~~(11) The administrative law judges, in the absence of any specific statutory authorization, shall not consider matters of bail or any other form of release from custody for those persons accused of parole or probation violations.~~

~~Section 2. Good Cause Hearings. KRS 439.315 requires the imposition of a supervision fee on all parolees and the establishment of a good cause hearing if the supervision fee is not paid. This section describes the good cause hearing.~~

~~(1) Upon nonpayment of any installment of the monthly supervision fee, the parole officer shall serve a notice of preliminary hearing on the parolee and also shall serve the supplemental notice of good cause hearing on the parolee.~~

~~(2) The good cause hearing shall be scheduled as any other preliminary revocation hearing.~~

~~(3) If the parolee makes the required supervision fee payment prior to the scheduled good cause hearing, the hearing shall be cancelled.~~

~~(4) The parolee shall be permitted legal representation at the good cause hearing.~~

~~(5) The burden of proof to show good cause for nonpayment of the supervision fee shall be placed upon the parolee.~~

~~(6) The administrative law judge of the Kentucky Parole Board shall determine whether good cause exists for the nonpayment of the supervision fee.~~

~~(7) If the administrative law judge finds that good cause exists for the nonpayment of the supervision fee, the charges shall be dismissed and the parolee shall be returned to parole supervision with the previously imposed supervision fee.~~

~~(8) If the administrative law judge finds that good cause does not exist, the parole officer may request that the hearing be continued sine die with the condition that the parolee pay the arrears and agrees to pay the supervision fee on a monthly basis.~~

~~(9) If the administrative law judge finds that good cause does not exist for nonpayment of the supervision fee, absent any motion from the parole officer, the hearing shall immediately continue and become a preliminary parole revocation hearing, and shall be conducted as described in Section 1 of this administrative regulation.~~

~~Section 3. Parole Violation Warrant. Parole violation warrants shall be issued as set forth below:~~

~~(1) If a case is referred to the Parole Board by the administrative law judge under the provisions of Section 1(6) of this administrative regulation, the Parole Board shall issue the parole violation warrant. A vote of the board shall not be necessary.~~

~~(2) If a case is referred to the full Parole Board by the administrative law judge with a recommendation that the parolee not be returned to the institution as a parole violator, pursuant to Section 1(7) of this administrative regulation, the board may issue a parole violation warrant, if upon review a majority of the board concurs that probable cause exists to believe a parole violation has taken place. If the board votes to issue the warrant, the warrant shall be issued.~~

~~(3) If it appears that a parolee has absconded from parole supervision, it otherwise appears that a parolee is a fugitive from justice, or a parole violation warrant is necessary to effect the return of the parolee to the state of Kentucky, the Parole Board may issue a warrant, if it receives documentation from the supervising parole officer, setting forth facts sufficient to conclude there are reasonable grounds to believe that some violation has occurred, and the commissioner or his designee submits to the board a recommendation that a warrant be issued.~~

~~(4) If the parolee is being supervised outside the state of Kentucky, a parole violation warrant may be issued upon a vote of the Parole Board based upon a written report from the supervising state setting forth facts sufficient to conclude that there are reasonable grounds to believe that a violation of parole has occurred, and the commissioner or his designee submits to the board a recommendation that a warrant be issued.~~

~~(5) In all other cases parole violation warrants may be issued only upon majority vote of the board, except as set forth in subsection (7) of this section. If the board votes to issue any warrant, the warrant shall be issued.~~

~~(6) The board may decline any request for a parole violation warrant made pursuant to any section of this administrative regulation except subsection (1) of this section. Any parole violation warrant, issued under any section of this administrative regulation, may be rescinded by majority vote of the board at any time.~~

~~(7) If a vote of the board is required to issue a parole violation warrant, and if there is no quorum of the board present to concur that probable cause exists and the warrant should be issued, any member of the Parole Board may issue a parole violation warrant if he, upon review concurs that probable cause exists to issue said warrant. If a parole violation warrant is issued under these circumstances, the board shall vote, as soon as is reasonable, on whether or not to concur in the issuance of the warrant. If a majority of the board does not concur, the warrant shall be voided by the board.~~

~~(8) Any member of the Parole Board may sign warrants.~~

~~Section 4. Preliminary Hearings Conducted Subsequent to the Issuance of the Parole Violation or for Parolees Supervised in Another State. (1)(a) This subsection shall not apply if a parolee is being supervised by another state and if that supervisory state held a preliminary parole revocation hearing for the parolee.~~

~~(b) A preliminary revocation hearing shall be conducted pursuant to Section 1 of this administrative regulation, if:~~

~~1. A parole violation warrant has been issued for a parolee without a preliminary revocation hearing; and~~

~~2. The parolee is apprehended or returns to the state of Kentucky.~~

~~(c) Except as provided by paragraph (e) of this subsection, following the hearing, the parolee shall be ordered returned to the appropriate institution of the Kentucky Department of Corrections for further consideration by the Parole Board if the administrative law judge finds that there is probable cause to believe that:~~

~~1. The parolee committed any of the violations contained in the warrant; and~~

~~2. The warrant was validly issued as to any of the charges contained within it.~~

~~(d) If the administrative law judge finds no probable cause, the case shall be referred to the Parole Board which shall withdraw the warrant and return the parolee to supervision.~~

~~(e)1. If probable cause is found, the administrative law judge may refer the case back to the Parole Board to decide whether the warrant should be exercised or withdrawn if:~~

~~a. The parole officer moves for a referral; or~~

~~b. The administrative law judge finds that there are overwhelming mitigation factors present that were not known to the~~

~~board at the time of the warrant's issuance.~~

~~2. If referred back to the Parole Board, the administrative law judge may include a recommendation that the warrant be rescinded. This recommendation shall be advisory only and shall not be binding on the board.~~

~~3. If the Parole Board decides to withdraw the warrant, the parolee shall be returned to normal parole supervision, subject to any additional conditions the Parole Board may impose.~~

~~4. If the Parole Board decides to exercise the warrant, the parolee shall be ordered returned to the appropriate institution.~~

~~(2) If a preliminary parole revocation hearing is held by the supervising state for a parolee being supervised in another state, and the supervising state concludes as a result of the hearing that a violation has occurred, the case shall first be reviewed by an administrative law judge of the board who shall determine whether or not the proceeding held in the supervising state, and the conclusions reached in the hearing, complies with due process. After the review, the administrative law judge shall refer the case to the Parole Board as set forth in Section 1(6) of this administrative regulation.~~

~~Section 5. Waiver of Preliminary Parole Revocation Hearings. (1) Any parolee charged with a violation of his parole may waive appearance before an administrative law judge of the Parole Board and by so doing waive his preliminary parole revocation hearing. Parolees desiring to waive this hearing shall submit their waivers in writing to the board or its administrative law judge for approval. These waivers may be accepted within the discretion of the board or its administrative law judges. No wavier shall be accepted unless it is found that the waiver was entered into by the parolee knowingly, and voluntarily and that the parolee is, and clearly understands that he is admitting guilt as to the violations charged. Notwithstanding the submission and acceptance of a waiver of the preliminary parole revocation hearing, the parolee may still submit evidence in mitigation of his conduct. After approval of the waiver, the matter shall proceed in the same manner as after a hearing before an administrative law judge.~~

~~(2) If a parolee being supervised in another state signs a waiver of preliminary hearing in that state, this waiver shall be reviewed by an administrative law judge of the board to determine if the waiver meets the requirements of subsection (1) of this section. If the administrative law judge determines that the waiver does not comply with subsection (1) of this section, the executive director shall refer the matter back to the Division of Probation and Parole and request that they take action necessary to insure compliance with this administrative regulation.~~

~~Section 6. Final Parole Revocation Hearings. Final parole revocation hearings shall be held within thirty (30) days after the return of the parolee to a state institution. At this hearing, the parolee shall have the charges, specified in the warrant, explained to him and he shall be given the opportunity to admit or deny them. If the inmate admits to the charges, then the board shall receive proof in mitigation of the charges. If the parolee wishes to present new or different information than presented at the preliminary hearing, and shows that this information could not have been presented at the preliminary hearing, he may request a special hearing. The grant or denial of a special hearing shall be totally within the discretion of the board. If granted by the board, a short deferment shall be given so the special hearing can be scheduled in central office and the parolee can secure legal counsel. The request for a special hearing by a parolee shall occur at the beginning of the final parole revocation hearing, before he admits or denies guilt. The parolee shall be notified of his right to request a special hearing at his preliminary parole revocation hearing. It is the responsibility of the parolee, and his alone, to request a special hearing if he so desires one.~~

~~Section 7. Special Hearings. (1) Special hearings shall be conducted in the central office of the Parole Board, unless the Parole Board changes the site for security or other factors it deems pertinent. In cases so heard, if the parole officer or the parolee requests the issuance of subpoenas to compel the appearance of witnesses or production of documents, the board shall issue them pursuant to KRS 439.390, if no claims for expenses incurred by these witnesses shall be submitted to the board, as it has no authorization to pay these expenses.~~

~~(2) At the special hearing, the following order of proceedings shall be followed:~~

~~(a) The parolee, parole officer, and all witnesses shall be sworn in by the Parole Board.~~

~~(b) The board shall present a short statement of the charges against the parolee.~~

~~(c) The parole officer shall present proof to substantiate the charges, subject to cross-examination by the parolee.~~

~~(d) The parolee shall present proof to rebut the parole officer's charges, subject to cross-examination by the parole officer.~~

~~(e) The parole officer may put on any rebuttal proof subject to cross-examination.~~

~~(f) The board may question both the parolee and the parole officer and any witnesses.~~

~~(g) The board shall then make a determination as to whether the parolee has violated his parole.~~

~~(h) If the parolee is found in violation or if he admits the violation and has proof in mitigation, the board shall receive proof from the parolee in mitigation of the violation subject to cross-examination.~~

~~(i) At the conclusion of the special hearing, the board shall make a determination as to the disposition of the case and notify the parolee in person or in writing as soon as practical.~~

~~Section 8. Waiver of Final Parole Revocation Hearing. A parolee being held pursuant to a parole violation warrant may, subsequent to his preliminary parole revocation hearing, or acceptance of a waiver thereof, request that he be allowed to waive his final parole revocation hearing. Parolees desiring to waive this hearings shall submit their waivers in writing to the board. Acceptance of this waiver shall be totally within the discretion of the board and shall be based only upon a finding that the waiver is entered into knowingly and voluntarily and that the parolee is admitting guilt as to the violations charged. Waiver of the right to the final hearing shall also be considered as waiver of any rights to a special hearing as provided for in Sections 6 and 7 of this administrative regulation. In the event that waiver of the final hearing is accepted, the final decision on the revocation of the parolee's parole shall be made by the board without any further proceedings.~~]

The Chair of the Kentucky Parole Board, with the authorization and approval of a majority of the members of the Kentucky Parole Board on September 30, 2019, approves the promulgation of the regulation on behalf of the Kentucky Parole Board, as indicated by her signature below.

LELIA A. VANHOOSE, Chair

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 21, 2019

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2019, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2019. 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: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax(502) 564-6686, email Justice.RegsContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for parole revocation.

(b) The necessity of this administrative regulation: This regulation is required to comply with 439.340(3)(b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 439.340(3) requires the Kentucky Parole Board to promulgate administrative regulations with respect to the eligibility of prisoners for parole, the conduct of parole and parole revocation hearings and all other matters that come before it, or conditions to be imposed upon parolees. This administrative regulation establishes the procedures for the revocation of parole.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction to offenders and administrative law judges concerning the process to revoke parole for violation of conditions of parole.

(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 totally rewrites the regulation to update the parole revocation process and make changes required by Jones v. Bailey, 576 S.W.3d 128 (2019).

(b) The necessity of the amendment to this administrative regulation: The amendment is required to comply with case law.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 439.340(3)(b) requires the Kentucky Parole Board to promulgate administrative regulations governing parole revocation. The amendment changes the requirements involving parole revocation hearings.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows compliance with case law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the nine Parole Board members, the staff that assist the Board, and approximately 5,722 offenders involved in parole revocation proceedings.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Parole Board members, staff that assist the Board, offenders, and administrative law judges involved in parole revocation proceedings will have to follow the changes made in the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department of Corrections (DOC) provides administrative and staff services for the Parole Board pursuant to KRS 439.320(1). Costs for the DOC to provide two additional administrative law judges, new clerical staff, equipment, supplies, offender management system programming costs, and other expenses are estimated to be $350,200.00. Inmates who are not indigent or who choose to hire private attorneys will incur attorney fees in an unknown amount for defense at the final revocation hearings.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The new requirements for final revocation hearings will allow compliance with case law.

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

(a) Initially: $350,200.00

(b) On a continuing basis: $335.200.00

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The DOC may need an increase in funds to cover these estimated costs.

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

(9) TIERING: Is tiering applied? NO. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The administrative regulation and the amendment to it will impact the operations of the Parole Board, the Department of Corrections, and jails and prisons within Kentucky.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 439.320 and 439.340

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated by this regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated by this regulation.

(c) How much will it cost to administer this program for the first year? The amendment is expected to increase costs by $350,200.00.

(d) How much will it cost to administer this program for subsequent years? The amendment is expected to increase costs by $335.200.00.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM**
**Kentucky Fire Commission**
**(Amendment)**

**739 KAR 2:140. Fire[~~Volunteer fire~~] department reporting requirements.**

RELATES TO: KRS Chapter 65A, 75.430, Chapter 95A

STATUTORY AUTHORITY: KRS 95A.050(3), 95A.055(13)[~~(9)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.055(13) requires the Commission to promulgate administrative regulations to implement KRS 75.430 and KRS 95A.055. This administrative regulation establishes [~~the volunteer~~] fire department reporting requirements.

Section 1. Definitions. (1) "Commission" means the Commission on Fire Protection Personnel Standards and Education established in KRS 95A.020[~~Chapter 95A~~].

(2) "Reporting fire department" means "fire department" as[~~is~~] defined by KRS 95A.055(1) which is obligated to report to the commission.

Section 2. Reporting Requirements. Each reporting fire department shall comply with KRS 95A.055(3[~~2~~]) and shall:

(1) Submit a list of[~~List~~] the elected or appointed members of the board of the reporting fire department, if applicable;

(2) Submit the budget adopted by the reporting fire department, if applicable; and

(3) Submit current year budget estimates, prior year amendments or transfers, and prior year end actual financial data for the following categories:

(a) Revenue calculations for the following categories:

1. Taxes;
2. Permits and licenses;
3. Payments made to governmental authorities in lieu of taxes;
4. Intergovernmental revenues;
5. Charges for services;
6. Other revenues; and
7. Interest earned;

(b) Receipts[~~Receipt~~] and cash calculations for the following categories:

1. Carryover cash from the prior reporting year;
2. Bonded debt;
3. Transfers to other funds;
4. Transfers from other funds;
5. Borrowed funds;
6. Government Leasing Act funds; and
7. Loans obtained from the commission[~~commissions~~]; and

(c) Appropriations[~~Appropriation~~] calculations for the following categories:

1. Personnel;
2. Operations;
3. Administration and reserves;
4. Capital outlay; and
5. Debt service.

Section 3. Reporting Procedure. (1) Each reporting fire department shall, on or before August 31 of each calendar year[~~last day of each fiscal year~~], complete and submit an updated Financial Disclosure Report to[~~the office of~~] the commission electronically via Web site access, by regular U.S. Mail, or through electronic mail to fdstateaid@kctcs.edu.

(2) Upon receipt of a reporting fire department's Financial Disclosure Report, [~~the office of~~] the commission shall review the Financial Disclosure Report for accuracy and compliance with the requirements set forth in this administrative regulation and in KRS 95A.055. If the commission finds that a reporting fire department's Financial Disclosure Report does not comply with the requirements set forth in this administrative regulation or in KRS 95A.055, the commission shall notify the reporting fire department in writing. The written notification shall describe[~~of~~] the specific deficiencies identified and the process and timeframe for correcting[~~timeline that the reporting fire department shall follow to correct~~] the deficiencies.

(3) On or before[~~By~~] October 1 of each calendar year,[~~the office of~~] the commission shall produce a cumulative report of all reporting fire departments' actual revenues, receipts, and appropriations and their averages, as reported on the reporting fire departments' Financial Disclosure Reports for that year, and of[~~. This report shall detail~~] the compliance of the reporting fire departments with the requirements of this administrative regulation and KRS 95A.055(3).[~~,~~] This report also shall be filed with the Legislative Research Commission[~~,~~] and shall be published on the commission's Web site within seven (7) days of[~~immediately upon~~] its production.

Section 4. Financial Reviews and Audits. (1) At least once every four (4) years, every reporting fire department shall be subject to a financial review that includes procedures developed by the commission and approved by the Auditor of Public Accounts.

(2) The commission may require reporting fire departments with the higher of annual receipts from all sources or annual expenditures equal to or greater than $100,000 but less than $500,000 to undergo an independent audit in the manner specified in KRS 65A.030(2) once every four (4) years.

(3) Every reporting fire department with the higher of annual receipts from all sources or annual expenditures equal to or greater than $500,000 for two (2) consecutive fiscal years shall be audited annually in the manner specified in KRS 65A.030(2) until its annual revenues or expenditures are less than $500,000.

(4) If a reporting fire department is audited under this section, it shall submit a copy of the audit report and all related documents to the commission within seven (7) days of receiving the completed audit report.

Section 5. Penalties. (1) If the commission identifies any irregularities relating to the finances or operations of a reporting fire department, it shall report them to the Attorney General and Auditor of Public Accounts. The commission may also notify any other public official with jurisdiction over fire departments for further investigation and follow-up action.

(2) If a reporting fire department fails to comply with the requirements of this administrative regulation, KRS 95A.055, or 75.430, the commission may, for substantial noncompliance or abuse, withhold[~~take~~] one (1) or more of the following[~~actions~~]:

(a)[~~(1) Withhold~~] Incentive pay to qualified firefighters under KRS 95A.250;

(b)[~~(2) Withhold~~] Volunteer fire department aid, funds used to purchase workers compensation insurance for fire departments, and low-interest loans under KRS 95A.262;

(c)[~~(3) Withhold~~] Thermal Vision Grant program funds under KRS 95A.400 to 95A.440; and

(d)[~~(4) Withhold~~] Any other funds controlled by the commission.[~~;~~

~~(5) Report any irregularities identified by the office of the commission relating to the finances or operations of a reporting fire department to the Attorney General, Auditor of Public Accounts, or any other public official with jurisdiction over fire departments for further investigation and follow-up action; or~~

~~(6) Prescribe corrective actions to bring a reporting fire department that is not in compliance with KRS Chapter 65A or this administrative regulation as of July 15, 2016 into compliance.~~]

Section 6.[~~5.~~] Incorporation by Reference. (1) "Financial Disclosure Report," (2019[~~4/16~~] edition), Kentucky Fire Commission, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Fire Commission, 118 James Court[~~Ct.~~], [~~Suite 50,~~]Lexington, Kentucky 40505, Monday through Friday, 8 a.m. to 4:30 p.m.

ANDREW SCOTT, Interim Chairperson

APPROVED BY AGENCY: November 11, 2019

FILED WITH LRC: November 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 27, 2020 at 1:00 p.m. Eastern Standard Time at 118 James Court, Lexington, Kentucky 40505. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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, 2020. 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: Jonathan L. Gay, Counsel for the Kentucky Fire Commission, phone (859) 225-4714, fax (859) 225-1493, email administrativeregulations@wgmfirm.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan L. Gay

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process and requirements for annual financial and administrative reporting by those fire protection districts or volunteer fire department districts operating under KRS Chapter 75 with the higher of annual receipts from all

sources or annual expenditures of less than $100,000 and all fire departments incorporated under KRS Chapter 273.

(b) The necessity of this administrative regulation: This administrative regulation is mandated by KRS 95A.055(13), which requires the Commission to promulgate administrative regulations to implement KRS 75.430 and 95A.055. With this amendment, the Commission has deleted language relating to old policy and procedures, as well as updated language to follow legislation enacted in 2018.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 95A.055 by establishing which fire departments, fire protection districts, and volunteer fire department districts are required to report annually to the Commission and the process and requirements for so doing.

(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 specifying the manner in which reporting fire departments, fire protection districts, and volunteer fire department districts are required to provide annual financial and administrative information to the Commission.

(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: New language has been inserted pursuant to legislation passed in 2018 to clarify reporting and auditing requirements.

(b) The necessity of the amendment to this administrative regulation: Inserted language updates existing regulation to align with newly enacted legislation and provides direction to reporting fire departments, fire protection districts, and volunteer fire department districts on current policies and procedures for submitting annual reports to the Commission.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 95A.055(13) requires the Commission to promulgate administrative regulations to implement KRS 75.430 and 95A.055. The amendments to this regulation align with 18RS HB122, which modifies which fire departments, fire protection districts, and volunteer fire department districts are required to report annually to the Commission. Additionally, this amended regulation articulates the process and requirements for the annual reports.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this regulation clarify which fire departments, fire protection districts, and volunteer fire department districts are required to report annually to the Commission and specifies the procedure and requirements for submitting annual reports.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Commission and all fire protection districts or volunteer fire department districts operating under KRS Chapter 75 with the higher of annual receipts from all sources or annual expenditures of less than $100,000 and all fire departments incorporated under KRS Chapter 273.

(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: Reporting fire departments will be required to supply administrative and financial information annually to the Commission. No new actions are required of reporting fire departments.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All entities will benefit from the transparency of reporting fire departments' financial condition.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost to the administrative body to implement this administrative regulation initially or in the future.

(a) Initially: The above paragraph is accurate for initial costs. This administrative regulation will not add any further cost to the administrative body.

(b) On a continuing basis: The above paragraph is accurate for continuing costs. This administrative regulation will not add any further cost to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Commission is a state agency that receives its annual budget from the state government. The implementation and enforcement of this administrative regulation will be funded through the Commission's general funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation did not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation because all fire departments in the Commonwealth are required to meet the standards mandated by this administrative regulation, regardless of certification level.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Commission as well as any fire protection districts or volunteer fire department districts operating under KRS Chapter 75 with the higher of annual receipts from all sources or annual expenditures of less than $100,000 and all fire departments incorporated under KRS Chapter 273.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 95A.055(13) requires the Commission to promulgate administrative regulations to implement KRS 75.430 and 95A.055. Additionally, KRS 95A.050(3) obligates the Commission to "promulgate reasonable administrative regulations relating to fire protection personnel." No federal statutes necessitate this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. This administrative regulation will not impose any costs on state or local government.

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs on state or local government.

Other Explanation: These proposed amendments create no fiscal impact.

**PUBLIC PROTECTION CABINET**
**Department of Insurance**
**(Amendment)**

**806 KAR 17:480. Uniform evaluation and reevaluation of providers.**

RELATES TO: KRS 205.560(12), 216B.155(2), 304.17A-005, 304.17A-500, 304.17A-545, 304.17A-575, 304.17A-576

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-545(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner[~~executive director~~] to promulgate reasonable administrative regulations necessary for, or as an aid to, the effectuation of any provision of the Kentucky Insurance Code [~~as defined in KRS 304.1-010. EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as the head of the department~~]. KRS 304.17A-545(5) requires the commissioner[~~executive director~~] to promulgate administrative regulations to establish a uniform application form and guidelines for the evaluation and reevaluation of health care providers, including psychologists, who will be on a managed care plan's list of participating providers. This administrative regulation establishes the uniform application form and guidelines for evaluation and reevaluation of a health care provider, including a psychologist.

Section 1. Definitions. (1) "Applicant" is defined by KRS 304.17A-575(1).

(2)[~~"Commissioner" means the Commissioner of Insurance.~~

~~(3)~~] "Evaluation" or "credentialing" means:

(a) A process for collecting and verifying professional qualifications of a health care provider;

(b) An assessment of a health care provider's professional competence and conduct; and

(c) A process to be completed before a health care provider may participate in a provider network of an insurer on an initial or ongoing basis.

(3)[~~(4)~~] "Form KAPER-1" means the uniform application for credentialing or recredentialing of a health care provider pursuant to KRS 304.17A-545(5).

(4)[~~(5)~~] "Health care provider" or "provider" means a:

(a) Health care provider pursuant to KRS 304.17A-005(23); or

(b) Psychologist licensed under KRS Chapter 319.

(5)[~~(6) "Insurer" is defined by KRS 304.17A-005(27).~~

~~(7) "Managed care plan" is defined by KRS 304.17A-500(9).~~

~~(8)~~] "Participating health care provider" means a participating health care provider pursuant to KRS 304.17A-500(10), including a psychologist licensed under KRS Chapter 319.

(6)[~~(9) "Provider network" is defined by KRS 304.17A-005(35).~~

~~(10)~~] "Reevaluation" or "recredentialing" means:

(a) A process for collecting and reverifying professional qualifications of a participating health care provider; and

(b) An assessment of a participating health care provider's professional competence and conduct.

Section 2. Guidelines for an Insurer. (1) Except as established in subsection (3)(b) of this section, an insurer which offers a managed care plan and performs credentialing or recredentialing activities shall use Form KAPER-1, Part A to credential or recredential a health care provider who desires participation in its provider network.

(2) Pursuant to subsection (1) of this section, an insurer shall:

(a) Have a mechanism for making available and accepting from a health care provider a handwritten or electronically submitted Form KAPER-1, Part A for:

1. Initial credentialing; and

2. Recredentialing;

(b) Within thirty (30) days of receipt of a Form KAPER-1, Part A, electronically or in writing:

1. Notify the health care provider of receipt of the Form KAPER-1 and, if applicable, of any omitted or questionable information included on the form;

2. Offer assistance to the provider, if requested; and

(c)1. Within sixty (60) days of receipt of a Form KAPER-1, Part A, provide an electronic or written notification regarding the status of credentialing to the health care provider; and

2. Extend the time period identified in section 2(2)(c)1, due to extenuating circumstances if:

a. Additional time is required by the insurer to consider information submitted on the Form KAPER-1, Part A; and

b. The health care provider is informed of the need for more time, including information relating to the extenuating circumstance, which caused the delay;

(d) Provide electronic or written notification as established in paragraph (c) of this subsection every thirty (30) days after the initial notification until a final determination regarding credential has been issued to the health care provider;

(e) Not require:

1. Information on the Form KAPER-1, Part A, which is not relevant to the scope of practice, health care setting, or service of the health care provider; and

2. Routine recredentialing of a health care provider more frequently than three (3) years from the previous credentialing date; and

(f) Upon making a final determination regarding credentialing of an applicant in accordance with KRS 304.17A-576(1), provide notification of the determination to the applicant.

(3) An insurer may use:

(a) Form KAPER-1, Part A to credential or recredential an individual in its provider network other than a health care provider; and

(b) The provider credentialing application form of the Council for Affordable Quality Healthcare as identified in the introduction of the Form KAPER-1, Part A, in lieu of the Form KAPER-1, Part A.

Section 3. Incorporation by Reference. (1) The "Kentucky Application for Provider Evaluation and Reevaluation", Form KAPER-1 (4/2009), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, 500 Mero St., 2SE11[~~215 West Main Street~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Department of Insurance Web site at: http://insurance.ky.gov.

NANCY G. ATKINS, Commissioner
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: November 15, 2019

FILED WITH LRC: November 15, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 a.m. on January 21, 2020 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick O'Connor II, Deputy Commissioner, Policy, 500 Mero Street, Frankfort, Kentucky 40602, phone (502) 564-6026, fax (502) 564-1453, email patrick.oconnor@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative

regulation establishes the uniform application to be used to credential medical, dental, and other health care providers.

(b) The necessity of this administrative regulation: The administrative regulation is required to by KRS 304.17A-545 in order to establish a uniform application for credentialing and re-credentialing health care providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation establishes the uniform application and form to be used by health care providers to become credentialed by insurers, managed care plans, and health care organizations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation fulfills the statutory requirement to establish a uniform application for credentialing.

(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 eliminates an unnecessary requirement from the uniform application incorporated by reference. Specifically, the Department has deleted from KAPER-1, Part B, Section 1 the phrase "[a]dditionally, photo ID should be presented in person at the hospital or health care organization where participation is desired." Previously, an individual provider seeking to become credentialed at a hospital or health care organization had to submit the uniform application incorporated by reference to the administrative regulation. In addition, due to language in the instructions, a provider was required to present to the facility in-person and show identification before the credentialing process was officially completed. Providers often would have to take time off from their practices and travel to the facilities to satisfy this requirement. The providers, if approved, would then be required to return to the facility and go through a similar process to obtain the necessary badge or identification cards to access the premises. The in-person identification requirement unnecessarily adds twenty-eight (28) days to the credentialing process. With the change, providers seeking to become credentialed will need only to submit a photocopy of their photo identification with their application. Subsequently, once the application has been approved, the individual provider will likely need to present identification in-person to obtain any necessary badge or identification card to access the hospital or health care organization. However, the in-person presentation of identification will occur outside of the credentialing process, and be specific to that particular hospital or health care organization's own processes. The amendment changes the language to ensure a provider does not need to show identification in-person in order to complete the credentialing process causing unnecessary delay.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to eliminate an unnecessary administrative burden causing delays in the credentialing process. Health care providers must present identification in the licensure process, and also to the particular facilities that they seek to gain access. It is unnecessary to require this as part of the credentialing process.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute by creating a uniform application for credentialing health care providers that does not cause unnecessary delay.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists the effective administration of the statute by ensuring the uniform application includes only information necessary to evaluate whether a provider should be credentialed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation impacts the 20,147 medical provider licensees in Kentucky that may seek to become credentialed or re-credentialed at various health care organizations.

(4) Provide an analysis of how the entities identified in the previous question 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 each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will no longer be mandated to require the presentation of photo identification in-person as part of the credentialing process. Instead, the credentialing process may rely on a photocopy of the identification card. Once the credentialing process is completed, the particular health care organization can simply utilize their process and procedures for verifying employees and granting access to the facility for the provider, including the in-person presentation of photo identification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Regulated entities will not be subject to any cost as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: Regulated entities and the public at large will realize substantial benefits as a result of this amendment. First, health care providers will not have to take days off from medical practices to travel to facilities to present an identification as part of the credentialing process. The elimination of the required travel and in-person presentation will allow providers to save money on travel, prevent lost income due to the time away from their practices, and ensure patient appointments are not unnecessarily delayed. Secondly, providers will greatly benefit from the more expedient credentialing process. The in-person presentation requirement adds, on average, twenty-eight days to the credentialing process. In short, the application is complete and going to be approved, but the provider has been unable to complete the in-person identification presentation process. Thus, a provider could already have been credentialed and treating patients at a hospital or other facility for almost one month but for this unnecessary requirement. The elimination ensures they can timely begin their work of treating patients at a health care organization. Hospitals, health care organizations, and patients will benefit from the elimination of this unnecessary red tape. The elimination of the month long delay ensurers that facilities can get desired providers on site expeditiously and serving the patient community in a timely fashion. The facilities and consumers will both benefit from this increased access to providers.

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

(a) Initially: The Department will not have any cost in implementing the administrative regulation.

(b) On a continuing basis: The Department will not have any cost in implementing the administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding is not necessary for the Department 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: An increase in fees is not necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements are applicable to all health care providers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance .

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.17A-545.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief

narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The administrative regulation will not generate any revenue for state or local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The administrative regulation will not generate revenue for state or local governments.

(c) How much will it cost to administer this program for the first year? The program will not cost anything to administer.

(d) How much will it cost to administer this program for subsequent years? The program will not cost anything to administer.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

**CABINET FOR HEALTH AND FAMILY SERVICES**
**Department for Public Health**
**Division of Administration and Financial Management**
**(Amendment)**

**902 KAR 8:070. Recruitment, examination, and certification of eligible applicants for local health departments.**

RELATES TO: KRS 61.872, 211.170(1), (2), 211.1751, 212.170, 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.1755(2) requires the cabinet to promulgate administrative regulations that establish policies and procedures for the personnel program for local health departments[~~through the promulgation of administrative regulations pursuant to KRS Chapter 13A~~]. This administrative regulation establishes[~~provides for~~] a recruitment program, [~~and establishes~~] procedures, and standards for the recruitment, examination, and certification of individuals for potential employment by local health departments.

Section 1. Announcement of a Vacant Position. (1) An agency, prior to announcing a specific vacancy, shall determine whether to recruit for a vacant position on a scheduled basis or on a continuous basis for positions that are difficult to attract qualified applicants.

(2) Except as provided by 902 KAR 8:090, Sections 1 and 2, and 902 KAR 8:080, Section 3, an agency desiring to fill a vacant position shall announce the vacant position
in the following manner:

(a) Provide notice of the vacant position within the agency in a manner that affords the ability of current employees to know of the vacancy and procedures for submitting an application;

(b) Provide notice of the vacant position through recruitment resources that are external to the agency; or

(c) A combination of paragraphs (a) and (b) of this subsection.

(3) An announcement shall contain the following information:

(a) The conditions under which an application for potential employment will be received;

(b) The assessment method utilized to select the individual, that may include an interview or demonstration of skills and abilities;

(c) The title and minimum salary of the class of position;

(d) The rates of pay at which appointments are expected to be made;

(e) A general statement of the duties to be performed;

(f) The minimum qualifications of education, training, and experience required as stated in the classification plan;

(g) The date, if required, on which an application is to be received in the agency; and

(h)[~~Veteran's preference, if applicable;~~

~~(i) All other conditions of competition, including the fact that failure in one (1) part of the selection criteria shall disqualify an applicant; and~~

~~(j)~~] If an agency requires pre-employment drug testing, criminal records information, physical examination, or other special conditions, a statement that they shall be required upon an offer of employment.

(4) The notice of the external recruitment effort shall meet the criteria of subsection (3) of this section and shall be distributed to one (1) or more of the following advertising methods:

(a) Newspapers;

(b) Web site;

(c) Other media viewable by the public;

(d) Employment services offices;

(e) Educational institutions;

(f)[~~Public officials;~~

~~(g)~~] Professional and vocational societies; or

(g)[~~(h)~~] Other media, individuals, and organizations as appropriate.

Section 2. Application for Employment Submittal and Review Process. (1) The agency shall be the custodian of applications.

(2) An Application for Employment, form CH-36, shall be required of an individual seeking employment with an agency.

(3) Effective July 1, 2020, all applications for employment shall be submitted electronically via https://kog.chfs.ky.gov/home/ and form CH-36 no longer accepted.

Section 3. Review of Applications by the Department. (1) The department shall review and determine the eligibility of an applicant for a position announced by an agency.

(2)(a) The department shall take one (1) or more of the actions listed in paragraph (b) of this subsection if an applicant, eligible, or appointee:

1. Lacks a specific requirement established for the assessment for the class or position;

2. Is unable to perform the duties of the class;

3. Makes[~~Except as provided for in subsection (3) of this section, has been convicted of a felony or misdemeanor;~~

~~4. Has previously been dismissed from a public service or agency for delinquency, misconduct, or other similar cause;~~

~~5. Made~~] a false statement or misrepresentation in the application;

4.[~~6.~~] Has used or attempted to use political pressure or bribery to secure an advantage in obtaining the position in the examination or appointment;

5.[~~7.~~] Has directly or indirectly obtained information regarding the assessment method to which the applicant was not entitled;

6.[~~8.~~] Has failed to submit a complete application as determined by the department;

7.[~~9.~~] Has failed to submit the application by the end date established[~~within the time limits prescribed~~] by the agency in a published announcement;

8.[~~10.~~] Has taken part in the compilation or administration of the interview process;

9.[~~11.~~] Has submitted an application for an unadvertised position to an agency that is not on continuous open recruitment; or

10.[~~12.~~] Has failed a background check or drug screen.

(b) Based on one (1) or more of the reasons listed in paragraph (a) of this subsection, the department shall take any of the following actions:

1. Refuse to examine an applicant;

2. Not qualify an applicant;

3. Remove the applicant's name from a register;

4. Refuse to certify an eligible on a register; or

5. Consult with the appointing authority in taking steps to remove a person already appointed.

(3) An applicant or employee who has been convicted of a

misdemeanor or felony may be employed, or continue employment, if the appointing authority and the department determine after review that:

(a) The applicant is highly qualified and eligible for appointment;

(b) The misdemeanor or felony conviction will not adversely affect the applicant's job performance;

(c) A specific need exists for the appointment or continuing appointment of this applicant or employee; and

(d) Every determination made is fully supported by written documentation available for public inspection under the provisions of KRS 61.872[~~Chapter 61~~].

(4) A disqualified applicant shall be promptly notified of the action in writing[~~by letter to the applicant's last known address~~].

Section 4. Establishment of Registers of Eligible Applicants. (1) An agency may announce a position on a continuous basis for a position that is difficult to recruit for and fill.

(2) If a job classification requires an applicant to meet the minimum qualifications, an individual shall remain on the register for a period of one (1) year from the date on which the individual is determined qualified.

(3) If a vacancy exists in a class of positions for which there is no appropriate register, the department may certify a new[~~prepare an appropriate~~] register for the class from a previous existing register[~~one (1) or more existing related registers~~].

(4) A register may be deemed to be exhausted by the department if fewer than five (5) eligible applicants remain on the register. [~~If a register is exhausted, each eligible on the register shall be notified by mail at his last known address.~~]

(5) The department may remove the name of an eligible from a register:

(a) For a disqualifying cause stipulated in Section 3(2)(a) of this administrative regulation;

(b)[~~If the eligible applicant cannot be located by the postal authorities as evidenced by the return of one (1) notice or a returned notice marked "no forwarding address";~~

~~(c)~~] On receipt of a statement from the eligible stating that he or she no longer desires consideration for a position;

(c)[~~(d)~~] If an offer of a probationary appointment to the class for which the register was established has been declined by the eligible;

(d)[~~(e)~~] If the eligible declines an offer of appointment for which the eligible previously indicated acceptance;

(e)[~~(f)~~] If the eligible fails to report for a scheduled interview without valid reason; or

(f)[~~(g) If an eligible fails to maintain a current address as evidenced by the return from postal authorities of unclaimed but properly addressed letters; or~~

~~(h)~~] If an eligible has been certified three (3) times to a valid register[~~an appointing authority~~] and has not been offered employment within one (1) year of the application.

(6) If an eligible receives a probationary appointment, the eligible shall be removed from the applicable register unless otherwise requested in writing.

Section 5. Issuance of Certification of Eligible Applicants. (1) The department shall issue a certification of eligible applicants to an agency in the following manner:

(a) A promotional certification of eligible applicants that responded to an announcement provided within an agency;

(b) A regular certification of eligible applicants that responded to an announcement provided to recruitment resources external to the agency; or

(c) A combination of paragraphs (a) and (b) of this subsection.

(2)[~~The appointing authority may request in writing to the department, special experience, education, or skills different from the minimum requirements of the class. If, after investigation of the duties and responsibilities of the position, the department approves the request, a certification may be issued to the agency containing the names of those individuals who possess the qualifications specified.~~

~~(3)~~] The[~~life of a~~] certification of eligible applicants [~~during which action may be taken~~] shall expire[~~be~~] sixty (60) days from the date of issue unless otherwise specified on the certification of eligible applicants.

(3)[~~(4)~~] A regular [~~-~~]status employee, placed in a layoff category, shall be considered[~~have first priority for consideration~~] in filling a vacancy in a classified position for which the employee is qualified in the agency from which the employee was laid off, for up to one (1) year.

(4)[~~(5)~~] A regular [~~-~~]status employee in the layoff category shall indicate in writing to the agency[~~department~~] that he or she desire[~~desires~~] reemployment.

(5)[~~(6)~~] If a laid-off regular status employee desires reemployment in a different job classification, the employee shall meet the minimum requirements of the classification.[~~(7) The life of the reemployment register is one (1) year or until the employee is reemployed, whichever comes first.~~]

Section 6. Assessment Method. (1) An assessment method shall be practical in nature, constructed to reveal the capacity of the applicant for the particular position, as well as general background and related knowledge. An assessment method may be:[~~;~~]

(a) A personal interview;

(b) Physical examination;

(c) An evaluation of experience and training;

(d) A demonstration of skill; or

(e) A combination of types, if all applicants for a position are given the same assessment method.

(2) An agency may form an interview committee to evaluate an eligible applicant through a structured interview process.

(3) The interview committee shall structure questions to assess the knowledge, skills, abilities,[~~and the~~] education, and work experience of the applicants chosen to be interviewed.

(4) The interview questions, criteria for selecting applicants to be interviewed, profiles of interviewed applicants, and results of the interview process shall be maintained by the agency for a period of thirteen (13)[~~sixteen (16)~~] months after an applicant has been appointed to the vacant position.[~~Section 7. Incorporation by Reference. (1) "Form CH-36] Application for Employment", 2/2011, Cabinet for Health and Family Services, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

ANGELA T. DEARINGER, M.D., MPH, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: November 7, 2019

FILED WITH LRC: November 15, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 27, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2020. 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: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, (502) 564-3970, julied.brooks@ky.gov., or Donna Little,

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures and standards for the recruitment, examination, and certification of individuals for potential employment by a local health department.

(b) The necessity of this administrative regulation: KRS 194A.050 authorizes the secretary of the cabinet to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities of the cabinet. KRS 211.1755(3)(d) authorizes the cabinet to promulgate administrative regulations for the recruitment of applicants, the determination of eligibility of applicants, the appropriate examination for applicants, and the provision of a list of qualified individuals for employment with local health departments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation outlines the recruitment, examination and certification processes related to employment through a local health department.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all interested parties have knowledge of the application process related to employment through a local health department.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation clarifies the recruitment, examination and certification process for those seeking employment with a local health department. This amendment incorporates an online application process that will replace the current paper version of the application.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure affected entities are aware of the most up to date process for employment.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.1755(2) requires the cabinet to establish personnel policies and procedures through the promulgation of administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure all affected entities are familiar with the recruitment, examination and certification process for employment with a local health department. The electronic application will help to streamline the application process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts fifty-eight (58) local health departments and approximately 2,300 employees. The Lexington-Fayette County, Louisville Metro Public Health and Wellness, and Northern Kentucky District Health Departments are exempt from 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 questions (3) will have to take to comply with this administrative regulation or amendment: Local health departments will need to be aware of the changes in this administrative regulation when screening applicants for employment and will need to begin using the online application upon the effective date listed in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): This amendment has no impact on cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The online application process will streamline the application process for those seeking employment with a local health department.

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

(a) Initially: This is an ongoing program and there will be no initial costs to the administrative body.

(b) On a continuing basis: This is an ongoing program and there will be no increased costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current agency funds will be used to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: There are no fees associated with this administrative regulation. An increase in funding is not needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees established in this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as this amendment affects all regulated entities equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local health departments, district health departments, Local Health Department Personnel Branch within the Division of Administration and Financial Management.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 211.1755.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? This is an ongoing program, there will be no initial costs.

(d) How much will it cost to administer this program for subsequent years? This is an ongoing program, there will be additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**
**Department for Public Health**
**Division of Administration and Financial Management**
**(Amendment)**

**902 KAR 8:090. Promotion, transfer, and demotion of local health department employees.**

RELATES TO: KRS[~~Chapter 18A, 211.090(3),~~] 211.170(1), (2), 211.1751, 211.1755 212.170(4),[~~212.350, 212.640, 212.782,~~] 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate

programs and fulfill the responsibilities vested in the cabinet. KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures for the local health department personnel program. This administrative regulation describes the provisions and requirements for promotions, transfers, and demotions of local health department employees.

Section 1. Promotion. (1) An employee may be promoted to a higher grade at any time upon the request of an appointing authority if the employee meets the minimum requirements of the position[for having a higher grade] as determined by the department.

(2) The[A] promotion of an employee shall be based upon individual performance, with due consideration for length of service and capability of the individual employee to perform the duties and responsibilities of the new position.

(3) A promoted employee shall serve a probationary period of thirteen (13) pay periods, to determine through performance evaluation, if the employee can satisfactorily perform the duties and responsibilities of the position.

(4) An employee who satisfactorily completes the required promotional probationary period of thirteen (13) pay periods, as documented by the performance evaluation, shall receive a three (3) percent increase in salary.

(5)(a) A regular[-] status employee may be promoted from a classified position to an unclassified position.

(b) If separated from an unclassified position following promotion, an employee shall revert to the class in which the employee previously held status.

(c) If there is no vacancy in that class, the employee may be reverted to a position for which the employee is qualified and certified by the department, or separated from employment if a position is not available.

(d) Time served in an unclassified position shall count towards years of service and seniority.

(e) The employee shall retain eligibility to earn annual, sick, and compensatory time, if applicable, and also receive agency provided benefits.

(6) If an employee is granted leave for medical reasons in excess of twenty (20) work days during the promotional probationary period, the employee's probationary period shall be extended for the same length of time as the granted leave to cover the absence.

(7) A performance evaluation shall be completed for an employee fourteen (14) calendar days prior to completing the probationary period in order to determine the employee's ability to perform the job duties successfully.

(8) An employee who has been promoted, but fails to successfully complete the probationary period, as documented by the performance evaluation conducted by the appointing authority or designated supervisory staff, shall revert to a position in the former class subject to subsection (9) of this section. Documentation for the unsuccessful completion shall be provided to the employee and the department.

(9) If approved by the appointing authority, a promoted employee may request, during the probationary period, to be reverted to a position in the former class. The employee may revert to a position in a different class if:

(a) There is no vacancy in the former class;

(b) The employee is qualified; and

(c) The employee is determined eligible by the department.

(10) If a regular employee in the classified service is dismissed for cause while serving a promotional probationary period, the employee shall have the right to appeal the dismissal in accordance with 902 KAR 8:110.

Section 2. Transfers. (1) The appointing authority may, at any time, transfer a regular employee from a position in one (1) organizational subdivision to a position of the same class in another organizational subdivision within an agency.

(2) A transfer of a regular employee from a position in one (1) class to a position in another class within an agency having the same entrance salary may be made only with the approval of the appointing authority and upon determination of eligibility and certification by the department.

(3) An employee of one (1) agency shall not transfer to another agency without prior approval of each appointing authority. If the transfer is approved:

(a) Accumulated annual and sick leave shall be transferred;

(b) Accumulated compensatory leave shall be paid in lump sum by the sending agency; and

(c) The annual increment date shall be retained by the employee.[~~(4) An employee initially appointed to a position in an agency having prior work experience in a health department established under KRS 212.350, 212.640, or 212.782, or an employee covered under KRS Chapter 18A, shall use the length of prior employment in determining the rate of earning annual leave provided for under 902 KAR 8:120, if the prior work experience does not exceed three (3) years since separation.~~]

Section 3. Demotions. (1) An employee may be demoted for one (1) of the following reasons:

(a) Documented unsatisfactory employee performance during the promotional probationary period;

(b) An employee, with the approval of the appointing authority, voluntarily requests a demotion to a position having a lower salary range and less responsibilities and duties;

(c) A documented disciplinary problem or the inability of an employee to perform a duty or responsibility required of the position; or

(d) Due to a reorganization or reassignment of job duties based on a reorganization plan submitted by an agency and approved by the department.

(2) If a demotion is due to a reorganization of an agency, the plan shall state if a reduction in salary of an employee is to occur.

(3) If an employee is demoted during the initial probationary period, the employee shall continue in the employee's probationary period as if the original appointment had been to the position of the lower class.

(4) The salary of an employee demoted as a result of documented unsatisfactory performance during the promotional probationary period shall be reduced to the level prior to promotion.

ANGELA T. DEARINGER, M.D., MPH, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: November 7, 2019

FILED WITH LRC: November 15, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 27, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2020. 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: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, (502) 564-3970, julied.brooks@ky.gov., or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation describes the provisions and requirements for promotions, transfers and demotions of local health department employees.

(b) The necessity of this administrative regulation: KRS 194A.050 authorizes the secretary of the cabinet to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities of the cabinet. KRS 211.1755(1) authorizes the cabinet to administer a personnel program for local health departments based on the principles of merit governing the recruitment, examination, appointment, discipline, removal, and other incidents of employment for county, city-county, and district agencies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation outlines the processes for promotion, transfer or demotion of an employee of a local health department.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all local health department personnel staff follow consistent procedures for employee promotion, transfer or demotion.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation removes the provision to use the length of prior health department work experience to calculate the rate of annual leave for an employee returning to work.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure equal opportunity for all health department employees eligible to earn leave time.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.1755(2) authorizes the cabinet to establish personnel policies and procedures through the promulgation of regulations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure all local health department personnel are consistent when calculating leave time for all employees eligible to earn leave.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts fifty-eight (58) local health departments and approximately 2,300 employees. The Lexington-Fayette County, Louisville Metro Public Health and Wellness, and Northern Kentucky District Health Departments are exempt from 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 questions (3) will have to take to comply with this administrative regulation or amendment: This amendment does not require any action for compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): This amendment has no impact on cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local health department personnel throughout the state will be aware of the process to promote, transfer or demote a current health department employee.

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

(a) Initially: This is an ongoing program and there will be no initial costs to the administrative body.

(b) On a continuing basis: This is an ongoing program and there will be no increased costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current agency funds will be used to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: There are no fees associated with this administrative regulation. An increase in funding is not needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees established in this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as this amendment affects all regulated entities equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local health departments, district health departments, Local Health Department Personnel Branch within the Division of Administration and Financial Management.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 211.1755.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? This is an ongoing program, there will be no initial costs.

(d) How much will it cost to administer this program for subsequent years? This is an ongoing program, there will be additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**
**Department for Public Health**
**Division of Administration and Financial Management**
**(Amendment)**

**902 KAR 8:096. Local health department employee performance evaluation program.**

RELATES TO: KRS 211.090(3), 211.170(1), 211.1751, 212.170(4), 212.870, 38 U.S.C 4301-4335

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the personnel program for local health departments. This administrative regulation establishes the requirements and the procedures for the evaluation of local health department employee performance.

Section 1. (1) Upon Board of Health approval, each agency shall elect to participate in one (1) of the following employee performance evaluation programs:

(a) The evaluation program described in 902 KAR 8:080,

Section 8; or

(b) The evaluation program described in this administrative regulation.

(2) An agency electing to participate in the employee evaluation program pursuant to this administrative regulation shall notify the department prior to the start of each fiscal year.

(3) An agency electing to participate in the employee evaluation program pursuant to 902 KAR 8:080, Section 8, shall:

(a) Notify the department prior to the start of each fiscal year;

(b) Remain under the requirements of that administrative regulation unless the agency elects to participate in the provision of this administrative regulation at the start of a subsequent fiscal year; and

(c) Not be subject to any provisions of this administrative regulation.

(4) The department shall provide technical assistance and training for appropriate local health department supervisory employees if requested by the agency and upon notification of the board's approval.[~~An agency electing to participate in the employee evaluation program of this administrative regulation shall have Board of Health approval and shall notify the department prior to the start of each fiscal year.~~

~~(2) The cabinet shall provide technical assistance and training for appropriate local health department supervisory employees if requested by the agency and upon notification of the board's approval.~~

~~(3) Each agency shall elect, with Board of Health approval, to participate in one (1) of the following employee performance evaluation programs:~~

~~(a) The evaluation program described in 902 KAR 8:080, Section 8; or~~

~~(b) The evaluation program described in this administrative regulation.~~

~~(4)(a) An agency choosing the employee evaluation program described in 902 KAR 8:080, Section 8, shall notify the department prior to the beginning of each fiscal year.~~

~~(b) The agency shall remain under the requirements of 902 KAR 8:080, Section 8, unless the agency, with Board of Health approval, elects to participate in the provisions of this administrative regulation at the beginning of a subsequent fiscal year.~~

~~(c) An agency choosing 902 KAR 8:080, Section 8, shall not be subject to any provision of this administrative regulation.~~]

Section 2. Purpose of the Employee Performance Evaluation Program. (1) The purpose of the employee performance evaluation program shall be to establish a uniform process for the evaluation of an employee's performance during a specified period of time.

(2) Specific objectives of the program shall include the following:

(a) Increase the efficiency of the agency and employee through the annual planning of job duties, objectives, and performance characteristics, and assisting the employee to improve performance through prior knowledge of the expectations of the supervisor;

(b) Serve as a medium which brings the supervisor and employee together for constructive performance discussion and written documentation;

(c) Serve as a means to determine the level at which an employee is performing;

(d) Recognize performance that meets and exceeds performance standards;

(e) Identify and correct substandard performance;

(f) Assist in determining and recording special talents, skills, and capabilities that might otherwise not be noticed or recognized;

(g) Ensure understanding of duties and standards expected of the employee;

(h) Provide assistance in assigning work and delegating responsibility based on a mutual understanding of the employee's skills and abilities;

(i) Encourage the continued growth and development of employees; and

(j) Serve as a basis to review the employee's performance for granting work related salary adjustments.

Section 3. Designated Employee Performance Evaluations. (1) Employee performance evaluations shall be completed at the following times:

(a) Prior to the completion of the required initial appointment probationary period established in 902 KAR 8:080, Section 9;

(b) At the annual employee performance evaluation in accordance with Section 4 of this administrative regulation;

(c) Prior to completion of the required probationary period following promotion established in 902 KAR 8:090, Section 1(3);

(d) Following reinstatement of an employee that had a gap of service with an agency of more than one (1) year but does not exceed three (3) years from date of separation in accordance with 902 KAR 8:080, Section 3(2)[~~(3)~~]; or

(e) At a special performance evaluation required by Section 10 of this administrative regulation.

Section 4. Annual Employee Performance Evaluation. (1) An employee that has gained regular status shall be evaluated by the appointing authority or designated supervisor on an annual basis.

(2)(a) An employee's established annual increment date shall be the first day of the first pay period after completion of twenty-six (26) pay periods of service during which the employee earned annual and sick leave pursuant to 902 KAR 8:120.

(b) A designated part-time employee's established annual increment date shall be the first day of the first pay period upon completion of twenty-six (26) pay periods of service.

(3) An employee returning to duty from leave without pay shall receive an annual increment when the employee has completed twenty-six (26) pay periods of service since the date the employee last received an annual increment.

(4) An annual increment date shall not change when an employee:

(a) Is in a position that is assigned a new or different salary grade;

(b) Receives a salary adjustment as a result the employee's position being reallocated;

(c) Is transferred;

(d) Receives a demotion;

(e) Is approved for detail to special duty;

(f) Returns from military leave covered under the Employment and Reemployment Rights of Members of the Uniformed Services [~~Employment and Reemployment Rights Act~~], 38 U.S.C. 4301 to 4335;

(g) Is reclassified; or

(h) Is promoted.[~~(5) A regular status employee shall maintain his current annual increment date. The performance evaluation date for an employee appointed shall be twenty six (26) pay periods following initial appointment.~~]

Section 5. Employee Performance Evaluation Process. (1) The supervisor shall maintain a record throughout the evaluation period for each employee supervised.

(2) The record shall provide a chronological record of [~~consistently maintained~~] accomplishments or problems of[~~by~~] an employee. The records shall include:

(a) Dates;

(b) Details;

(c) Names; and

(d) Any written statements regarding accomplishments or problems.

(3) The purpose of the record shall be to ensure that the evaluations are based on actual activities and performance during the review [~~rating~~] period and provide documentation necessary for the performance salary adjustment or indicated disciplinary actions necessary in the case of unacceptable performance.

(4) A performance evaluation shall be completed for each regular status employee using the Local Health Department Employee Performance Evaluation form CH-40B[~~(CH-40A), developed by the department in consultation with the agencies and the council~~].

(5) The CH-40B[~~CH-40A~~] shall contain documented efforts made [~~by the supervisor~~] during the review period to correct unacceptable performance of the employee.

(6) At the beginning of the review period, the supervisor shall identify for each employee supervised:

(a) The performance competencies;

(b) Expectations;

(c) Goals; and

(d) Objectives.

(7) A supervisor shall develop an annual, written performance plan for each employee supervised.

(8) The supervisor and employee shall meet to discuss the identified performance competencies, expectations, goals, and objectives, and decide on an individual development plan to assist the employee in performing the job. The annual performance plan shall include:

(a) An annual performance plan period;

(b) Job-related performance competencies, goals, and objectives that are consistent with the employee's position description and relate to the agency's goals and performance competencies. Each performance competency shall describe:

1. Standards or indicators of success; and

2. Measurable results and time frames if applicable; and

(c) Provisions for a minimum of one (1) interim performance plan review during the plan year to discuss performance progress, any deficiencies, and plan updates as necessary.

(9) The supervisor, at the end of the review period, shall rate the performance of an employee on the identified performance competencies, indicating both the level of work performed and examples of the employee's work supporting the rating given on each measure and the final rating the employee will receive.

(10) The supervisor shall identify the performance competencies, goals, expectations, and objectives for the next plan year.

(11) The results of the employee performance evaluation may be submitted to the second line supervisor[~~reviewer~~], if other than the appointing authority, and the appointing authority prior to meeting with the employee.

(12) The supervisor and the employee shall meet to discuss the supervisory ratings, performance competencies, goals, and expectations, objectives identified for the next review period, and the employee's development plan for the next review period. The employee shall have the opportunity to provide input, examples of work, and a self-evaluation for the supervisor's consideration.

(13) The employee shall have an opportunity to attach written comments concerning the rating of the supervisor's evaluation. The comments shall be provided to the supervisor no later than five (5) working days after the supervisor and employee meet to discuss the performance evaluation.

(14) An employee that disagrees with the performance rating conducted by the employee's supervisor may ask for a review with the second line supervisor or appointing authority[~~reviewer~~]. If the employee is not satisfied with the response,[~~of the reviewer,~~] the employee may submit a grievance through the agency's grievance procedure.

Section 6. Employee Performance Evaluation Competencies. (1) An employee shall be evaluated on at least the following performance competencies:

(a) Position knowledge;

(b) Communication;

(c) Concern for accuracy;

(d) Service orientation;

(e) Organizational awareness; and

(f) Performance orientation.

(2) A supervisor shall be evaluated on the following competencies in addition to those stated above:

(a) Staff development;

(b) Functional planning; and

(c) Decision making.

(3) In addition to the required competencies established in subsections (1) and (2) of this section, additional competencies may be added to the employee's or supervisor's evaluation that reflects the level of development of the employee, level of responsibility, degree of independence, complexity of duties, and the overall scope of the employee's job duties.

Section 7. Employee Evaluation Rating Factors. The following ratings shall be used by the supervisor to evaluate an employee's job performance for the competencies identified:

| | |
|---|---|
| 5 | Highly Commendable Performance |
| 4 | Proficient and Commendable Performance |
| 3 | Effective and Competent Performance |
| 2 | Needs Development Performance |
| 1 | Unacceptable Performance |

Section 8. Overall Performance Rating of the Employee. The supervisor shall provide an overall rating of the employee's performance based on[~~the supervisor's judgment regarding~~] the following levels of performance:

(1) Highly commendable performance rating level for the employee who:

(a) Consistently surpasses skill expectations in execution of the majority of critical job responsibilities and objectives;

(b) Makes exceptional contributions to the overall functioning of a department by demonstrating initiative, flexibility, and creativity in addressing issues or developing systems, procedures, or enhancements for greater efficiencies and effectiveness;

(c) Possesses superior[~~superb~~] skills and knowledge;

(d) Constantly anticipates or responds quickly to changing situations and departmental needs;

(e) Constantly contributes workable solutions to projects or problems;

(f) Demonstrates work of a superior quality; and

(g) Is a solution-oriented team player who maintains and promotes excellent working relationships.

(2) Proficient and commendable performance rating level for the employee who:

(a) Consistently demonstrates skill in the execution of the majority of critical job responsibilities and objectives;

(b) Makes important contributions to the overall functioning of a department by demonstrating solid performance with respect to productivity and quality;

(c) Possesses strong skills and knowledge; and

(d) Is an excellent[~~a strong~~] team player who maintains and promotes good working relationships.

(3) Effective and competent performance rating level for the employee who:

(a) Competently executes the majority of critical job responsibilities and objectives;

(b) Makes positive contributions to the overall functioning of an agency by demonstrating sufficient performance with respect to productivity and quality of work;

(c) Possesses appropriate level of skills and knowledge;

(d) Maintains and promotes positive working relationships as a team player;

(e) Works positively to influence the work group: and

(f) Adjusts readily to changing situations and work assignments.

(4) Needs development performance rating level for the employee who:

(a) The overall performance to ensure consistent execution of all job responsibilities and objectives needs development;

(b) Demonstrates success in some areas but guidance in other areas has been needed; and

(c) Demonstrates performance competencies that need further development and consistent application.

(5) Unacceptable performance rating level for the employee whose overall performance indicates that:

(a) Job duties, responsibilities, and objectives have not been consistently met;

(b) Employee's performance requires close monitoring and has not kept pace with job related requirements; and

(c) Successes have been only occasional or of minimal impact and performance has failed to demonstrate sufficient level of competencies required.

Section 9. Salary or Annual Leave Adjustment for an Employee Based on the Levels of Performance. (1)[~~If, in the judgment of the supervisor and appointing authority,~~] An employee who receives an

overall rating at the highly commendable or proficient and commendable level,[~~the employee~~] shall be eligible to receive:

(a) The annual increment[~~employee performance~~] rate adopted by the Board of Health at the beginning of the fiscal year not to exceed five (5) percent of the employee's salary; and

(b)1. An additional lump sum payment that was adopted by the Board of Health at the beginning of the fiscal year not to exceed five (5)[~~three (3)~~] percent of the employee's salary if adequate documented justification is provided to the department for approval; or

2. An additional one (1) or two (2) days annual leave.[~~and~~]

(c) The lump sum payment or annual leave adjustment shall be effective the same date as the annual increment [~~was~~] awarded.

(2)[~~If, in the judgment of the supervisor and appointing authority,~~] An employee who receives a performance rating at the effective and competent level[~~, the employee~~] shall be eligible to receive the annual employee performance rate adopted by the Board of Health at the beginning of the fiscal year not to exceed five (5) percent of the employee's salary.

(3)(a)[~~If, in the judgment of the supervisor and appointing authority,~~] An employee who receives a rating at the needs development level after appropriate supporting documentation has been made, [~~the employee~~] shall be eligible[~~entitled~~] to receive a salary adjustment equivalent to fifty (50) percent of the annual performance evaluation rate adopted by the Board of Health at the beginning of the fiscal year not to exceed five (5) percent of the employee's salary.

(b) An appointing authority shall require a special evaluation to be conducted no later than 120 days following the annual evaluation to determine if the employee's level of performance has improved.

(c) If the employee's performance has improved to the effective and competent level, the appointing authority shall approve the employee's receipt of the additional fifty (50) percent over the remainder of the evaluation period.

(d) For the employee who shows no improvement in performance or whose performance deteriorates, the appointing authority shall:

1. Remove the fifty (50) percent salary increment; and

2. Initiate appropriate disciplinary action in accordance with[~~as found in~~] 902 KAR 8:100.

(4)(a) For[~~If, in the judgment of the supervisor and appointing authority,~~] an employee who receives a rating at the unacceptable level, the appointing authority shall not grant a salary increase except as provided in paragraph (d) of this subsection.

(b) The appointing authority shall initiate dismissal action if indicated by supporting documentation.

(c) If the supporting documentation does not indicate a dismissal action, the appointing authority shall initiate appropriate disciplinary action followed by a performance re-evaluation to be completed no later than 120 days after the disciplinary action was initiated.

(d) The appointing authority shall provide the employee a salary adjustment equivalent to fifty (50) percent of the annual performance evaluation rate at the needs development performance level if an employee improves the level of performance and satisfactorily meets the performance improvement objectives as determined by the re-evaluation.

(5) The employee performance salary adjustment shall be given to the eligible employee at the beginning of the first pay period following twenty-six (26) pay periods of service during which the employee was in pay status.

(6) An employee whose annual increment is denied shall be notified by the appointing authority in writing at least fourteen (14) calendar days prior to the annual increment date.

Section 10. Special Performance Evaluation. A special performance evaluation may be conducted at any time by the employee's supervisor to gauge the level of performance or to improve performance.

Section 11.[~~Employee Rights and Responsibilities. (1) An employee shall have the opportunity to include written comments pertaining to an evaluation and may attach additional pages, as necessary.~~

~~(2) If the employee provides comments, the comments shall be attached to the evaluation form and made part of the employee personnel file.~~

~~(3)The employee shall sign the performance evaluation. However, the employee's signature shall not be required for the evaluation to be complete; the signature shall only indicate the evaluation has been discussed with the employee and shall not imply agreement or disagreement with the evaluation.~~

~~(4) An employee shall be provided with the basis of the evaluation and, upon written request, shall be provided a copy of documents which were considered in completing the evaluation.~~

~~(5) Upon written request to the next higher-level administrator, an employee with regular status shall be granted an opportunity to discuss any concerns regarding the evaluation.~~

~~Section 12~~] Incorporation by Reference. (1) "[~~Form CH-40 A,~~] Local Health Department Employee Performance Evaluation[~~Form~~]", CH-40B 5/2019[~~7/1/2006, Cabinet for Health and Family Services~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ANGELA T. DEARINGER, M.D., MPH, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: November 7, 2019

FILED WITH LRC: November 15, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 27, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2020. 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: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, (502) 564-3970, julied.brooks@ky.gov., or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and the procedures for the evaluation of local health department employee job performance.

(b) The necessity of this administrative regulation: KRS 194A.050 authorizes the secretary of the cabinet to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities of the cabinet. KRS 211.1755(1) authorizes the cabinet to administer a personnel program for local health departments based on the principles of merit governing the recruitment, examination, appointment, discipline, removal, and other incidents of employment for county, city-county, and district agencies.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: This administrative regulation establishes a uniform process for the evaluation of a local health department employee's job performance during a specified period of time.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all local health department personnel staff follow consistent procedures for employee job performance evaluation.

(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 this administrative regulation replaces annual "employee performance" with annual "increment" as the basis for the rate for employee salary adjustment as calculated by the board of health. The option for an agency to offer an additional one (1) to two (2) days of annual leave in lieu of a lump sum payment for highly commendable, and proficient and commendable performance ratings is included in this amendment. A new employee performance evaluation form is incorporated by reference. This form replaces the prior form.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure affected entities are aware of the employee performance evaluation process.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.1755(2) authorizes the cabinet to establish personnel policies and procedures through the promulgation of regulations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure all affected entities are familiar with the employee performance procedures for local health department personnel.

(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 fifty-eight (58) local health jurisdictions and 2,300 employees. The Lexington-Fayette County, the Louisville Metro Public Health and Wellness, and Northern Kentucky District Health Departments are exempted from 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 questions (3) will have to take to comply with this administrative regulation or amendment: Local health department personnel staff will need to adjust how salary increments are determined to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): This amendment has no impact on cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local health department employees throughout the state will be aware of the performance evaluation process.

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

(a) Initially: This is an ongoing program and there will be no initial costs to the administrative body.

(b) On a continuing basis: This is an ongoing program and there will be no increased costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current agency funds will be used to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: There are no fees associated with this administrative regulation. An increase in funding is not needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees established in this regulation.

(9) TIERING: Is tiering applied? Tiering is applied in this administrative regulation. The salary increase or additional annual leave days that can be awarded to a local health department staff member is based on the level of overall performance evaluation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local health departments, district health departments, Local Health Department Personnel Branch within the Division of Administration and Financial Management.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1) and 211.1755.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? This is an ongoing program, there will be no initial costs.

(d) How much will it cost to administer this program for subsequent years? This is an ongoing program, there will be additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Employment and Reemployment Rights of Members of the Uniformed Services, 38 U.S.C. 4301 to 4335.

2. State compliance standards. The cabinet is to administer a personnel program for local health departments based on the principles of merit governing the recruitment, examination, appointment, discipline, removal and other incidents of employment for county, city-county, and district agencies.

3. Minimum or uniform standards contained in the federal mandate. This federal statute eliminates or minimizes the disadvantages to civilian careers and employment which can result from uniformed services, minimizes the disruption to the individual as well as their employers, and prohibits discrimination against persons because of their service in the uniformed services.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements than those required under Employment and Reemployment Rights of Members of the Uniformed Services Act.

**CABINET FOR HEALTH AND FAMILY SERVICES**
**Department for Public Health**
**Division of Administration and Financial Management**
**(Amendment)**

**902 KAR 8:120. Leave provisions applicable to employees of local health departments.**

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870, Chapter 337, 29 C.F.R. Part 825, 29 U.S.C. 207, 2601, Pub.L. 103-3[~~206~~]

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the local health department personnel program. This administrative regulation establishes work hours, leave, and compensatory time provisions for employees of local health departments.

Section 1. Hours of Work. (1) The normal work week shall consist of thirty-seven and one-half (37.5) hours per week.

(a) The appointing authority shall establish the hours and days of work for the agency or for specific employees.

(b) The work schedule may be changed by the appointing authority to provide for flexibility in meeting particular work requirements of the agency or specific employees whose schedules may require them to work different hours.

(2) Hours worked in excess of the thirty-seven and one-half (37.5) hours during the established work week shall be:

(a) Approved by the appointing authority; and

(b) Subject to compensatory time and overtime provisions of this administrative regulation.

(3) The standard pay period shall consist of seventy-five (75) hours.

(4) An appointing authority, with department approval, may establish a position having special conditions of employment based on the needs of the agency.

(5) The employee who requests and receives consideration for special conditions shall acknowledge acceptance of the special conditions in writing.[~~(6) Special conditions may include the following:~~

~~(a) Earning annual leave and sick leave at a rate based on the hours worked;~~

~~(b) An arrangement for handling nonwork time that may occur with the specific job responsibilities.~~]

Section 2. Earning of Annual Leave. (1) Except for a temporary or emergency employee, a full-time employee shall earn annual leave credit at the following rate:

| Years of Service | Annual Leave Hours Earned Per Pay Period-[/]Per Year of Twenty-six (26) Pay Periods |
|---|---|
| 0 to 5 years | 3.5 hours per pay period-[/]91.0 hours per year |
| 5 to 10 years | 4.4 hours per pay period-[/]114.4 hours per year |
| 10 to 15 years | 5.2 hours per pay period-[/]135.2 hours per year |
| 15 to 20 years | 6.1 hours per pay period-[/]158.6 hours per year |
| 20 years or more | 7.0 hours per pay period-[/]182 hours per year |

(2) Annual leave for a full-time employee shall not accrue unless the employee has been in pay status at least thirty-seven and one-half (37.5) hours of the standard pay period. The employee shall be credited with additional leave credit upon the first day of the pay period following the pay period in which the leave was earned.

(3) Except for a temporary or emergency employee, a part-time employee, who is designated as serving on a part-time 100 hour basis and is in pay status at least twenty-three (23) hours each pay period, shall earn annual leave credit at the following rate:

| Years of Service | Annual Leave Hours Earned Per Pay Period-[/]Per Year of Twenty-six (26) Pay Periods |
|---|---|
| 0 to 5 years | 2.1 hours per pay period-[/]54.6 hours per year |
| 5 to 10 years | 2.6 hours per pay period-[/]67.6 hours per year |
| 10 to 15 years | 3.1 hours per pay period-[/]80.6 hours per year |
| 15 to 20 years | 3.6 hours per pay period-[/]93.6 hours per year |
| 20 years or more | 4.2 hours per pay period-[/]109.2 hours per year |

(4) In computing years of total service for determining the rate of earning annual leave for designated part-time 100 hour employees, only the[~~those~~] months[~~shall be used during which~~] the employee was designated as a full-time, part-time 100 hour, or was on educational leave with pay shall be used.

(5) An employee who has retired from a position covered by a state retirement system, is receiving retirement benefits, and returns to an agency, shall not receive credit for months of service prior to retirement.

(6) An employee who has resigned from one agency and returns to another agency as an original appointment shall not receive credit for months of service prior to resignation.

(7) Annual leave shall not accrue unless an employee is working or on authorized leave with pay. Annual leave shall not accrue if an employee is on authorized educational leave with pay.

(8) The maximum amount of annual leave earned by a full-time employee that may be accumulated and carried forward to the next calendar year shall not exceed the following amounts:

| Years of Service | Maximum Amount of Annual Leave Earned by Full-time Employees |
|---|---|
| 0 to 5 years | 225.0 hours |
| 5 to 10 years | 277.5 hours |
| 10 to 15 years | 337.5 hours |
| 15 to 20 years | 390.0 hours |
| Over 20 years | 450.0 hours |

(9) The maximum amount of annual leave for a designated part-time 100 hour employee who works an average of 100 hours per month that may be accumulated and carried forward to the next calendar year shall not exceed the following amounts:

| Years of Service | Maximum Amount of Annual Hours Earned by Designated Part-time 100 Employees |
|---|---|
| 0 - 5 years | 120 hours |
| 5 - 10 years | 148 hours |
| 10 - 15 years | 180 hours |
| 15 - 20 years | 208 hours |
| Over 20 years | 240 hours |

(10) Except as provided for in Section 3(8) of this administrative regulation, annual leave earned in excess of that which is allowed to be accumulated shall be converted to sick leave and credited during the first pay period following the end of the calendar year. Annual leave shall not be granted in excess of that earned.

Section 3. Use of Annual Leave Credit. (1) An employee who has accumulated annual leave credit, upon timely request and subsequent approval of the supervisor[~~appointing authority~~], shall be granted leave subject to the operating requirements of the agency.

(2) An employee shall not be charged with annual leave for absence except on a day upon which they would otherwise work and receive pay.

(3) Absence for a fraction or part of a day that is chargeable to annual leave shall be charged in fifteen (15) minute periods.

(4) An employee shall be paid a lump sum for accumulated annual leave, not to exceed the maximum amounts established in Section 2 of this administrative regulation, if separated by proper resignation, layoff, retirement, or change from full-time or part-time 100 hour to part-time. Following payment of annual leave, leave remaining after the payment of the maximum provided in Section 2 of this administrative regulation shall be removed from the balance.

(5) Upon the death of an employee, the employee's estate shall be entitled to be paid for the unused portion of the employee's accumulated annual leave.

(6) Annual leave shall not be advanced or taken until it is earned.

(7) An absence due to sickness, injury, or disability in excess

of accumulated sick leave, may be charged against annual leave if approved by the appointing authority.

(8) An employee who has accumulated annual leave in excess of 275 hours may request payment of an amount of annual leave not to exceed seventy-five (75) hours during the fiscal year of the agency. The requested annual leave payment, if approved by the appointing authority, shall not reduce the employee's balance of annual leave below 275 hours and shall be paid in a manner convenient to the agency.

(9) An appointing authority may require an employee who has a balance of compensatory leave hours to use compensatory leave before the employee's request to use annual leave balance is granted, unless the employee's annual leave balance will exceed the maximum number of hours that may be carried forward pursuant to Section 2(8) and (9) of this administrative regulation.

Section 4. Earning of Sick Leave. (1) A full-time employee, except an emergency employee, shall earn sick leave at the rate of three and one-half (3.5) hours per pay period.

(a) An employee shall have worked or been in pay status for at least thirty-seven and one-half (37.5) hours of the seventy-five (75) standard hours in each pay period in order to accumulate sick leave.

(b) The employee shall be credited with sick leave upon the first day of the pay period following the pay period in which the leave was earned.

(2) An employee designated as a part-time 100 hour employee, except an emergency employee, who is in pay status at least twenty-three (23) hours in a pay period shall earn sick leave at the rate of two and one-tenth (2.1) hours per pay period. A part-time 100 hour employee shall be credited with additional sick leave upon the first day of the pay period following the pay period in which the leave was earned.

(3) A full-time employee completing ten (10) years of total service in full-time status with an agency shall be credited with seventy-five (75) additional hours of sick leave.

(4) An employee designated as a part-time 100 hour employee completing ten (10) years of total service in a part-time 100 status with an agency shall be credited with forty-five (45) additional hours of sick leave.

(5) A full-time employee completing 240 months of total service in a full-time status with one (1) or more agencies shall be credited with an additional seventy-five (75) hours of sick leave.

(6) An employee designated as a part-time 100 hour employee completing 240 months of total service in a part-time 100 status with one (1) or more agencies shall be credited with forty-five (45) additional hours of sick leave.

Section 5. Uses of Sick Leave Credit. (1) The appointing authority, upon proper request, may grant sick leave with pay to a full-time or designated part-time 100 hour employee with sufficient leave credit, if the employee:

(a) Receives medical, psychiatric, dental, or optical examination or treatment;

(b) Is disabled by sickness or injury;

(c) Is required to provide care for a sick or injured spouse, child, step-child, parent, step-parent, brother, step-brother, sister, step-sister, grandparent, step-grandparent, grandchild, step-grandchild, mother- or father-in-law, or daughter- or son-in-law;

(d) Would jeopardize the health of others at his or her workstation post because of exposure to a contagious disease;

(e) Has lost by death a spouse, child, step-child, parent, step-parent, brother, step-brother, sister, step-sister, grandparent, step-grandparent, grandchild, step-grandchild, mother- or father-in-law, or daughter- or son-in-law; or

(f) Is required to take the employee's spouse, child, step-child, parent, step-parent, brother, step-brother, sister, step sister, grandparent, step-grandparent, grandchild, step-grandchild, mother- or father-in-law, or daughter- or son-in-law; for medical, psychiatric, dental, or optical examination or treatment.

(2) Accumulated sick leave may be granted for death in the employee's family, as described in subsection (1) of this section, and shall be limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(3) An employee shall file a written request for sick leave with or without pay within a reasonable time. An employee shall request advance approval for sick leave for medical, dental or optical examination and for sick leave without pay.

(4) Except for an unexpected absence from work because of an illness, the employee shall notify the employee's supervisor or other designated person in advance. Failure to do so in a reasonable time period may be cause for denial of the sick leave for the period of absence or for disciplinary action.

(5) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave for the days or hours sick leave[~~that~~] is requested. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required signed by a licensed practitioner and certifying to the incapacity, examination, and treatment during the time for which sick leave was taken. An appointing authority may grant sick leave if the application is supported by acceptable evidence.

(6) If an employee requests leave in excess of five (5) working days, a statement from the employees' licensed practitioner shall accompany the request for leave. The statement shall contain the following:

(a) The licensed practitioner's judgment[~~judgement~~] that the employee is incapable of performing the essential duties of the job;

(b) Estimate of the length of time that the employee's illness or disability will last;

(c) Restrictions which would render the employee incapable of performing the essential duties of the job; and

(d) Recommendation for special considerations to accommodate the employee once released to return to work.

(7) An appointing authority may place an employee on sick leave if:

(a) The employee's health might jeopardize others;

(b) The employee's health prevents performance of job[~~his~~] duties and responsibilities;

(c) The employee fails to produce a satisfactory medical certificate upon request; or

(d) The employee exhibits behavior that disrupts the agency's ability to function in providing services or that might endanger the employee or others.

(8) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in fifteen (15) minute periods.

(9) An employee who is transferred or otherwise changed from one (1) agency to another shall retain accumulated sick leave in the receiving agency.

(10) A former employee who is reinstated or reemployed shall have his or her previous rate of earning annual leave and unused sick leave balances reinstated upon successful completion of probation, if applicable.

(11) Sick leave may be utilized in cases of absence due to illness or injury for which workers'[~~worker's~~] compensation income benefits are received for lost time to the extent of the differences between these benefits and the employee's regular salary.

Section 6. Family and Medical Leave. An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 29 U.S.C. 2601 et seq., Pub.L. 103-3, and the federal regulations implementing the Act, 29 C.F.R. Part 825.

Section 7. Maternity Leave. (1) The appointing authority shall grant a maternity leave of absence to an employee because of pregnancy or the adoption of a child. Maternity leave shall not exceed twelve (12) weeks, unless the appointing authority approves additional maternity leave. However, the total leave shall not exceed twenty-six (26) pay periods.

(2) The employee on maternity leave shall use accumulated sick leave credit if available:

(a)[~~, only~~] For the period of time medically necessary to be absent from work as indicated by the certification of a licensed practitioner; or

(b) For the period of time for placement of a child for adoption with the employee that includes:

1. Counseling sessions;

2. To appear in court;

3. Consult with attorneys or doctors representing the birth parents;

4. Submit to a physical; or

5. Travel to complete adoption.

(c)[~~(a)~~] If sick leave is not available, the employee shall use accumulated annual or compensatory leave if available.

(d)[~~(b)~~] If leave credit is exhausted, the employee shall be placed on leave without pay.

(3) Accumulated annual and compensatory time shall be used for maternity leave that extends beyond the period of absence that is medically necessary for the employee as certified by the employee's medical practitioner.

(4) The employee shall submit a written request for maternity absence, which shall include a statement from a licensed practitioner indicating the expected date of delivery.

(a) The request shall be submitted to the appointing authority as soon as practical to allow for adjustments in the work schedule during the employee's absence.

(b) Additional information from the employee's licensed practitioner may be required if there are complications and the period of absence begins sooner than agreed, extends further than agreed, or requires the use of maternity leave beyond twelve (12) weeks.

Section 8. Workers' Compensation. (1)(a) The required medical expense for a service rendered by a hospital or doctor, or for a prescribed medication, shall be paid subject to approval of the claim.

(b) A percentage of the employee's average weekly wage shall be paid if the employee is unable to work for an extended period due to a job-related injury or illness.

(c) 1. Except as provided in subparagraph 2. of this paragraph, compensation shall not be payable for the first seven (7) days of disability.

2. If the disability continues over two (2) weeks, compensation shall be allowed from the first day of disability.

(2) The appointing authority shall offer an employee one of the following options of compensation for an absence due to illness or injury for which workers' compensation benefits are eligible:

(a) Allow employee to accept the workers' compensation benefits directly and use accumulated leave in order to maintain regular full salary; or

(b) Allow employee to use accumulated leave to maintain regular full salary, or a portion thereof, and remit the workers compensation benefits to the agency to reinstate accumulated leave used for the period of time benefits were paid.

(3) The employee shall not receive and retain the benefit of paid leave and workers' compensation income benefits that exceeds his or her regular full salary for the same period of time[~~If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick or annual leave may be used to maintain full salary.~~

~~(2) If paid leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the agency for the period of time the employee received paid leave.~~

~~(3) The employee's sick and annual leave shall be immediately reinstated to the extent that workers compensation benefits are assigned. An employee shall not receive paid sick and annual leave and workers compensation pay for the same period of time~~].

Section 9. Sick Leave Without Pay. (1) An appointing authority shall[~~may~~] approve sick leave without pay upon appropriate request of an employee for reasons provided for in this section[~~and in Section 7 of this administrative regulation~~].

(2) An employee shall have used accumulated annual, sick, and compensatory leave credit prior to approved leave without pay.

(3) The amount of continuous sick leave without pay approved by an appointing authority shall not exceed twenty-six (26) pay periods.

(4) If an employee approved for leave with pay exhausts accumulated annual, sick, and compensatory leave credit, the employee shall be placed on sick leave without pay, if the total absence does not exceed twenty-six (26) pay periods.

(5) The appointing authority may require periodic statements from a licensed practitioner during the sick leave without pay period attesting to the employee's inability to perform the essential functions of the employee's job duties with or without reasonable accommodation.

Section 10. Return from Sick Leave With or Without Pay. (1) At the termination of sick leave with pay not exceeding thirteen (13) pay periods, the appointing authority shall return the employee to his or her former position. At the termination of sick leave with pay exceeding thirteen (13) pay periods, the appointing authority shall return the employee to a position for which he or she is qualified and which resembles his or her former position as closely as circumstances[~~circumstance~~] permit. If the employee is unable to perform the essential functions of the position, and there is no other vacant position for which the employee qualifies and is able to perform, the employee may be laid off.

(2) If an employee on approved sick leave without pay for less than twenty-six (26) pay periods has given notice of his or her ability to resume his or her duties, the appointing authority shall return the employee to a position for which he or she is qualified and which resembles his or her former position as closely as circumstances permit. If the employee is unable to perform the essential functions of the position, and there is no other vacant position for which the employee qualifies and is able to perform, the employee may be laid off.

(3) An employee shall be considered to have resigned if the employee:

(a)1. Has been on continuous sick leave without pay for twenty-six (26) pay periods;

2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave; and

3. Is unable to return to work; or

(b)1. Has been given priority consideration by the appointing authority for a vacant position with the agency, for which the employee qualifies and is capable of performing its essential functions with or without reasonable accommodation; and

2. The appointing authority has been unable to place the employee in a vacant position.

Section 11. Sharing of Sick Leave. (1) An employee of the local health department who has accrued a sick leave balance of more than seventy-five (75) hours may, with the approval of the appointing authority, request the transfer of a specified amount of the employee's sick leave balance in excess of seventy-five (75) hours to another named status employee of the local health department who is authorized to receive sick leave.

(2) The appointing authority may approve the amount of sick leave received under this section[~~, if any,~~] if:

(a) The employee or a member of his or her immediate family suffers from a medically certified illness, injury, impairment, or physical or psychiatric condition which has caused, or is likely to cause, the employee to go on leave[~~for at least ten (10) consecutive working days~~];

(b) The employee's need for absence and use of leave are certified by a licensed practitioner; and

(c) The employee has exhausted his or her accumulated sick leave, annual leave, and compensatory leave balances.

(3) Leave may be transferred from an employee of one agency to an employee within the same agency or may be transferred from an employee of one (1) agency to an employee of another agency. The agency[~~department~~] shall maintain records of leave transferred between employees and the utilization of transferred leave.

(4) If an employee is on leave transferred under this section, he or she shall receive the same treatment with respect to salary, wages, and employee benefits.

(5) Salary and wage payments made to an employee while on leave transferred under this section shall be made by the agency employing the person receiving the leave. Leave transferred under this section which remains unused shall be returned, on a prorated basis, to the employees who transferred the leave if the appointing authority finds that the leave is no longer needed and will not be needed at a future time in connection with the illness or injury for

which the leave was transferred to an employee in his or her agency.

(6) An employee shall not intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce, either directly or indirectly, another employee for the purpose of interfering with the employee's right to voluntarily contribute leave as authorized under this section.

Section 12. Court Leave. An employee shall be entitled to a leave of absence, without loss of pay or time, for each day during which the employee is subpoenaed by a court to serve as a juror or witness, except in a case where the employee or a member of the employee's family is a party plaintiff. If relieved from duty as a juror or witness during normal working hours, the employee shall return to work. An employee shall retain the fees earned while serving as a potential juror.

Section 13. 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 Kentucky National Guard shall be relieved from duty without the loss of pay or time to serve under orders on training duty for a period of up to ten (10) working days, not to exceed seventy-five (75) hours in any one (1) federal fiscal (October 1 to September 30) year. The appointing authority, before granting military leave, may require a copy of the orders requiring the attendance of the employee.

(2) The appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of active duty not to exceed six (6) years. Accumulated annual leave and compensatory leave may be paid in lump sum at the request of the employee, upon being placed on leave.

(3) A part-time 100 or full-time status employee, who is a spouse or a member of the U.S. Armed Forces, including a member of a state National Guard or a Reserve component on federal duty, shall receive one (1) day off, with pay, from work when the member is deployed and one (1) day off, with pay, from work when the member returns.

Section 14. Voting Leave. The appointing authority shall allow each employee four (4) hours paid leave to vote, if requested in advance. The absence shall not be charged against accumulated leave.

Section 15. Special Leave of Absence. (1) An appointing authority may grant special leave for education, training, or for other circumstances.

(2) Leave may be granted for a period not to exceed twenty-six (26) pay periods.

(3) Leave may be granted [~~with or~~] without pay if all other leave has been exhausted.

(4) Leave for attendance at a college, university, vocational or business school shall be for training in subjects that:

(a) Relate to the employee's work; and

(b) Will benefit the agency.

Section 16. Administrative[~~Special~~] Leave for Investigative Purposes. (1) An appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of an allegation of employee misconduct.

(2) Leave shall not exceed thirty (30) working days.

(3) The employee shall be notified in writing by the appointing authority that he or she is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(4) If the investigation reveals no misconduct by the employee:

(a) The employee shall be made whole for the period of the leave; and

(b) Records relating to the investigation shall be purged from agency files.

(5) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. Notification shall be made to the employee, whether the employee has remained with the agency, or has voluntarily resigned during the interim between being placed on special leave for investigative purposes and the completion of the investigation.

Section 17. Absence Without Leave. (1) An employee who is absent from duty without approval shall report the reason for the absence to the employee's supervisor immediately.

(2) Unauthorized or unreported absence shall be considered absence without leave and deduction of pay may be made by the appointing authority for each period of absence.

(3) Absence without leave may constitute grounds for disciplinary action.

(4) An employee who has been absent without leave or notice to the supervisor for more than three (3) working days shall be considered to have resigned the employee's position.

Section 18. Holidays. (1) Agency full-time employees shall be given a holiday on the following days:

(a) The first day of January and one (1) extra day;

(b) The third Monday in January;

(c) One-half (1/2) day for Good Friday (3.75 hours);

(d) The last Monday in May;

(e) The fourth day of July;

(f) The first Monday in September;

(g) The 11th day of November;

(h) The fourth Thursday in November plus one (1) extra day;

(i) The 25th of December and one (1) extra day; and

(j) Presidential election day.

(2) If a day enumerated in subsection (1) of this section falls on a Saturday, the preceding Friday shall be observed as the holiday. If the day enumerated falls on a Sunday, the following Monday shall be observed as the holiday. If an extra day is provided for, it shall be observed as stated by the department.

(3) A full-time employee shall be in pay status on the work day prior to the holiday in order to receive the holiday benefit.

(4) Full-time exempt employees required to work on a holiday shall accrue compensatory time for the time worked.

Section 19. Absences Due to Adverse Weather. (1) An employee who chooses not to report to work, or who leaves early, in the event of adverse weather conditions, shall have the absence:

(a) Charged to annual leave; or

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted.

(2) An employee who is on prearranged annual, compensatory, or sick leave shall charge leave as originally requested unless the agency closes down. Once the agency closes down all employees are paid other paid leave.

(3) If catastrophic, life-threatening weather conditions occur, such as that created by hurricane, tornado, flood, or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the following provisions 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 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 Section 20 of this administrative regulation.

Section 20. Earning of Compensatory Time. (1) An employee determined to be exempt under the provisions of the Fair Labor Standards Act, 29 U.S.C. 207[~~206~~], and Kentucky Wage and Labor Law, KRS Chapter 337, authorized by the appointing authority to work in excess of the prescribed thirty-seven and one-half (37.5) hours of duty in one (1) week shall accumulate compensatory time in fifteen (15) minute periods for excess time worked on an hour-for-hour basis. The maximum amount of compensatory time accumulated shall be 200 hours.

(2) An employee shall have the prior approval of the appointing authority or the employee's immediate supervisor before compensatory leave may be earned.

(3) A nonexempt employee authorized by the appointing authority to work in excess of the prescribed thirty-seven and one-half (37.5) hours of duty in one (1) week shall be paid at the employee's current salary for each hour not subject to the provisions of the Fair Labor Standards Act, 29 U.S.C. 207[~~206~~], and Kentucky Wage and Labor Law, KRS Chapter 337.

(4) Any time worked in excess of forty (40) working hours in one (1) week shall be paid overtime at a rate of one and one-half (11/2) for each hour exceeding forty (40) working hours. Holiday pay and other types of non-working hours paid are not included in the total number of working hours subject to time and a half overtime pay.

Section 21. Using Accumulated Compensatory Time. (1) An employee who has accrued compensatory time shall be permitted by the appointing authority to take compensatory time off if practical and upon proper request by the employee.

(2) An employee who has accumulated at least thirty (30) hours of compensatory time may be paid for the accumulated leave by the appointing authority upon written request. If payment is approved by the appointing authority, it shall be at the employee's regular rate of pay and in thirty (30) hour increments.

(3) If an employee has accumulated the maximum amount of compensatory leave, the appointing authority shall pay the employee for at least fifty (50) hours of accumulated compensatory leave at the employee's regular rate of pay and shall reduce the employee's compensatory leave balance accordingly.

(4) Upon separation from service or transfer to another agency, unused compensatory time shall be reimbursed in a lump sum payment to the employee.

(5) Upon the death of an employee, the employee's estate shall be paid for unused accumulated compensatory time.

ANGELA T. DEARINGER, M.D., MPH, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: November 7, 2019

FILED WITH LRC: November 15, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 27, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2020. 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: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, (502) 564-3970, julied.brooks@ky.gov., or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes work hours, leave, and compensatory time provisions for employees of local health departments.

(b) The necessity of this administrative regulation: KRS 194A.050 authorizes the secretary of the cabinet to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities of the cabinet. KRS 211.1755 authorizes the cabinet to administer a personnel program for local health departments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.1755(3)(a)1 authorizes the cabinet to establish leave policies for local health department employees. This administrative regulation covers multiple leave categories.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that employees understand the provisions for accruing and using all available forms of leave.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation clarifies the provisions for earning sick leave and adds that non-emergency sick leave be requested in advance. The maternity leave provisions have been expanded to include time off for adoption. The workers' compensation section has been revised to mirror the language in 101 KAR 2:140. This amendment removes the requirement that an employee be on leave for ten (10) consecutive working days to be eligible to receive shared sick leave through donation and gives the local health department the authority to maintain the record of shared leave. This amendment also adds the provision that an employee on leave shall not be required to use the prearranged leave time if the local health department closes due to adverse weather. The rate for a nonexempt employee to earn overtime pay has been added through this amendment.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure local health employees are aware of the provisions for accruing and using available leave time.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.1755(3)(a)1 authorizes the cabinet to establish personnel policies for the governance of all agency employees including leave policies. This amendment addresses all forms of leave that can be accrued and used by local health department employees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will help to ensure fair employment practices by local health departments.

(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 fifty-eight (58) local health jurisdictions and 2,300 employees. The Lexington-Fayette County, the Louisville Metro Public Health and Wellness, and Northern Kentucky District Health Departments are exempted from 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 questions (3) will have to take to comply with this administrative regulation or amendment: This amendment will require local health department employees to be aware of the revisions to the accrual and usage of leave time.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): This amendment has no impact on cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local health department employees considering adoption will be afforded maternity leave time. Those employees receiving workers' compensation benefits will understand the requirements for using leave time. Employees who are on preapproved leave time will be afforded the same consideration as those who are on duty when the local health department is closed due to adverse weather conditions.

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

(a) Initially: This is an ongoing program and there will be no initial costs to the administrative body.

(b) On a continuing basis: This is an ongoing program and there will be no increased costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current agency funds will be used to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: There are no fees associated with this administrative regulation. An increase in funding is not needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees established in this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as this amendment affects all regulated entities equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local health departments, district health departments, Local Health Department Personnel Branch within the Division of Administration and Financial Management.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1) and 211.1755.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? This is an ongoing program, there will be no initial costs.

(d) How much will it cost to administer this program for subsequent years? This is an ongoing program, there will be additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Family and Medical Leave Act (FMLA) of 1993, Pub.L. 103-3, 29 U.S.C. 2601, the Fair Labor Standards Act, 29 U.S.C. 207, and 29 C.F.R. Part 825.

2. State compliance standards. The cabinet is to administer a personnel program for local health departments based on the principles of merit governing the recruitment, examination, appointment, discipline, removal and other incidents of employment for county, city-county, and district agencies.

3. Minimum or uniform standards contained in the federal mandate. The Family and Medical Leave Act, 29 U.S.C. 2601, entitles employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition. The Fair Labor Standards Act, 29 U.S.C. 207, requires that an employee that works longer than forty (40) hours in a workweek shall receive compensation for his or her work in excess of forty (40) hours at a rate not less than one and one-half (11/2) times the regular rate as which he or she is employed.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements than those required under FMLA or the Fair Labor Standards Act.

**CABINET FOR HEALTH AND FAMILY SERVICES**
**Department for Public Health**
**Division of Administration and Financial Management**
**(Amendment)**

**902 KAR 8:140. Appointment of a health officer or a public health department director of a local health department.**

RELATES TO: KRS 211.170(1), (2), 212.170, 212.230, 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2), 212.170[, ~~212.870~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures for the local health department personnel program. This administrative regulation establishes the process for appointing a health officer or public health department director and the provisions of the merit system.

Section 1. Appointment of Health Officer. (1) An agency shall appoint a health officer in accordance with the provisions of KRS 212.170, 212.230, or 212.870.

(2) The health officer shall be an unclassified employee and hold office in accordance with KRS 212.170[~~at the pleasure of both the board of health of the agency and the department~~].

(3) The health officer in the unclassified service shall be subject to the following administrative regulations:

(a) 902 KAR 8:060, Salary adjustments for local health departments;

(b) 902 KAR 8:070, Recruitment, examination, and certification of eligible applicants for local health departments;

(c) 902 KAR 8:080, Initial appointment, probationary period, layoffs, performance evaluation, and the resignation of employees of local health departments;

(d) 902 KAR 8:120, Leave provisions applicable to employees of local health departments; and

(e) This administrative regulation.

(4) An individual promoted to the position of health officer shall receive a salary increase, which shall be the greater of the following:

(a) Fifteen (15) percent above current salary;

(b) The minimum of the grade assigned to the health officer; or

(c) Three (3) percent per grade not to exceed midpoint of grade.

Section 2. Appointment of Public Health Department Director. (1) In the absence of a health officer provided for in this administrative regulation, an agency shall be under the direction of a public health department director who shall meet minimum qualification of education and experience established by the department.

(2) A qualified individual shall be:

(a) Appointed or promoted from an external announcement to the position of public health department director;

(b)[~~after the effective date of this administrative regulation, shall be~~] Employed in the unclassified service; and

(c) Hold office at the pleasure of both the board of health of the agency and the department.

(3)[~~Individuals who are in the position of physician director or health department director as of September 3, 1993 shall maintain~~

~~their status.~~
~~(4)~~] A public health department director in the unclassified service shall be subject to the following administrative regulations:

(a) 902 KAR 8:060, Salary adjustments for local health departments;

(b) 902 KAR 8:070, Recruitment, examination, and certification of eligible applicants for local health departments;

(c) 902 KAR 8:080, Initial appointment, probationary period, layoffs, performance evaluation, and the resignation of employees of local health departments;

(d) 902 KAR 8:120, Leave provisions applicable to employees of local health departments; and

(e) This administrative regulation.

(4)[~~(5)~~] An individual promoted to the position of public health department director shall receive a salary increase, which shall be the greater of the following:

(a) Fifteen (15) percent above current salary;

(b) The minimum of the grade assigned to the health officer; or

(c) Three (3) percent per grade not to exceed midpoint of grade.

Section 3. Removal of a Health Officer or Public Health Department Director in the Unclassified Service. (1)[~~Except as provided for in Section 2(3) and (4) of this administrative regulation, if~~] A health officer or public[~~and~~] health department director[~~in the unclassified services is~~] removed by the board of health or the department[~~, he~~] shall be notified in writing, and may, within seven (7)[~~fourteen (14)~~] days,[~~may~~] make a written request for a pre-termination conference.

(2) If no request for a pre-termination conference is made, the removal shall become effective upon the expiration of seven (7)[~~fourteen (14)~~] days.

(3) If a request for a pre-termination conference is made, the pre-termination conference shall be held at the office of the agency within fourteen (14) calendar days after the request is received by the board of health of the agency.

(4) The health officer or public health department director[~~of health~~] shall not be removed until the pre-termination conference has been held and a decision rendered by the board of health of the agency and the department.

(5) Upon termination of employment, an employee who was promoted to the health officer or public health department director position may:

(a) Revert to the position held prior to promotion;[~~from which he was promoted~~] or

(b)[~~may~~] Be considered for a vacant position [~~for which he qualifies~~] in the agency.

(6) The employee shall have had at least five (5) years of continuous service with the agency prior to the promotion to be considered for reversion.

(7) The reversion shall be subject to the approval of the board of health of the agency.

(8)[~~(6)~~] An employee[~~originally appointed to the health officer or health department director position~~] shall not be reverted to a position in the classified service unless the individual meets the minimum qualifications for the position[~~he qualifies~~].

ANGELA T. DEARINGER, M.D., MPH, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: November 7, 2019

FILED WITH LRC: November 15, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 27, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2020. 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: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, (502) 564-3970, julied.brooks@ky.gov., or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for appointing a health officer or public health department director, and the provisions of the merit system.

(b) The necessity of this administrative regulation: KRS 194A.050 authorizes the secretary of the cabinet to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities of the cabinet. KRS 211.1755 authorizes the cabinet to administer a personnel program for local health departments based on the principles of merit governing the recruitment, examination, appointment, discipline, removal and other incidents of employment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation outlines the process for appointing a health officer or public health department director.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures a consistent process for appointing a health officer or public health department director.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation clarifies that qualified applicants for the position for health officer or public health department director must be selected from an external announcement, and shortens the time for a health officer or public health department director to make a written request for a pre-termination conference should the board of health or the department recommend removal from their position.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the search for potential candidates for the position of public health department director is fair and unbiased. This will ensure the selected individual appointed or promoted to the position meets the minimum qualifications of education and experience. Shortening the timeline for requesting a pre-termination conference is consistent with other appeal processes allowed through program regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.1755 authorizes the cabinet to establish personnel policies on the principles of merit governing the recruitment and removal of local health department employees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will help to ensure fair employment practices by local health departments.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts fifty-eight (58) local health departments and approximately 2,300 employees. The Lexington-Fayette County, Louisville Metro Public Health and Wellness, and Northern Kentucky District Health Departments are exempt from 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 questions (3) will have to take to comply with this administrative regulation or amendment: This amendment will require local boards of health to openly advertise for the position of public health department director. Health officers and public health department directors will need to be aware of the change in timeline for requesting a pre-termination conference should the local health board recommend removal from the position.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): This amendment has no impact on cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By advertising for an open position of public health department director, local health boards will ensure a competitive recruitment process and will ensure potential candidates for the position meet the minimum qualifications for education and experience. Shortening the timeline for the request for a pre-termination conference will provide for a more timely resolution for affected entities.

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

(a) Initially: This is an ongoing program and there will be no initial costs to the administrative body.

(b) On a continuing basis: This is an ongoing program and there will be no increased costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current agency funding will be used to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: There are no fees associated with this administrative regulation. An increase in funding is not needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees established in this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as this amendment affects all regulated entities equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local health departments, district health departments, Local Health Personnel Branch within the Division of Administration and Financial Management.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1) and 211.1755.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? This is an ongoing program, there will be no initial costs.

(d) How much will it cost to administer this program for subsequent years? This is an ongoing program, there will be no additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**
**Office of Human Resource Management**
**Division of Employee Management**
**(Amendment)**

**920 KAR 1:070. Deaf and hard of hearing services.**

RELATES TO: KRS 2.110, 163.500, 163.506, 194A.005(1), 194A.030(9)[~~(10)~~] 194A.060, 278.548, 309.300-309.319, 344.500(1), 28 C.F.R. 35.160, 29 U.S.C. 794, 42 U.S.C. 12131-12213, 45 C.F.R. 160, 162, 164, Pub.L. 104-191, 110-325[~~, EO 2009-541~~]

STATUTORY AUTHORITY: KRS 12.290, 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for proper administration of the cabinet and its programs. In accordance with federal mandates in 28 C.F.R. 35.160, 29 U.S.C. 794, 42 U.S.C. 12131-12213, as amended by Pub.L. 110-325, and KRS 12.290[,] and 344.500(1), the Cabinet for Health and Family Services has a responsibility to provide accessibility to program services delivered directly by the cabinet or indirectly through a contractual or other arrangement to an individual who is deaf or hard of hearing. This administrative regulation establishes cabinet procedures for the provision of interpreting services to a client who is deaf or hard of hearing.

Section 1. Definitions. (1) "Assignment" means interpreting for a client as approved by a cabinet program.

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Cabinet program" means a program of service, financial aid, or other benefit administered by the cabinet and provided:

(a) Directly by the cabinet; or

(b) Indirectly by the cabinet through a contractual or other arrangement.

(4) "Client" means a person who:

(a) Applies in writing, electronically, verbally, or through a designated representative for participation in a cabinet program; or

(b) Receives a service, financial aid, or other benefit from a cabinet program.

(5) "Deaf" and "hard of hearing" are defined by KRS 163.500.

(6) "Emergency" means a situation of an urgent nature in which a client determines that a delay of the event for more than twenty-four (24) hours is likely to result in loss of service, financial aid, or other benefit in a cabinet program.

(7) "Interpreter" is defined by KRS 309.300(4).

(8) "Interpreting" is defined by KRS 309.300(5).

(9) "Kentucky Board of Interpreters for the Deaf and Hard of Hearing" means:

(a) "Board" defined by KRS 309.300(1); and

(b) The board established by KRS 309.302.

(10) "Kentucky Commission on the Deaf and Hard of Hearing" or "KCDHH" means the commission established by KRS 163.506.

(11) "Office of Human Resource Management" or "OHRM" means the major organizational unit of the cabinet established by KRS 194A.030(9)[~~(10) and EO 2009-541~~].

(12) "Ongoing interpreting services" means interpreting services required to meet the needs of a client in a cabinet program in accordance with the client's plan of care, case plan, or program eligibility.

(13) "Time-limited interpreting services" means interpreting services which are provided to a client at a specific time and location in order to access a cabinet program.

Section 2. Provision of Interpreting Services. (1) A cabinet program shall make available interpreting services to a client who is deaf or hard of hearing.

(2) Interpreting services provided by a cabinet program shall

be at no charge to a client.

(3) Interpreting provided by a cabinet program shall be in accordance with KRS 309.301.

(4) On behalf of a client who is deaf or hard of hearing and does not waive interpreting services in accordance with Section 4(2) of this administrative regulation, a cabinet program shall:

(a) Access an interpreter licensed by the Kentucky Board of Interpreters for the Deaf and Hard of Hearing in accordance with KRS 309.300-309.319 and 201 KAR Chapter 39; or

(b) Request interpreting services:

1. In accordance with 735 KAR 2:050; and

2. Through the Interpreter Referral Service Program established by KCDHH in 735 KAR Chapter 2.

(5) A cabinet program may utilize an employee for interpreting as an alternative to the requirement of subsection (4) of this section if:

(a) The cabinet program employs an individual who is licensed by the Kentucky Board of Interpreters for the Deaf and Hard of Hearing in accordance with KRS 309.300-309.319 and 201 KAR Chapter 39; and

(b) No actual or perceived conflict exists between the employee's job duties and the provision of interpreting services for a client, as approved by the employee's supervisor.

(6) A cabinet program or a client may access the Kentucky Telephone or Video Relay Service Program established in accordance with KRS 278.548.

Section 3. Interpreter Selection. (1) In the selection of an interpreter, a cabinet program shall give consideration to:

(a) An interpreter's:

1. Licensure;

2. Certification;

3. Years of experience; and

4. Exposure to the cabinet program or familiarity with the jargon of the cabinet program;

(b) Prior use of the interpreter by the cabinet program for the same client;

(c) Any preference of the client; and

(d) The estimated cost for the interpreting services.

(2) An interpreter who provides interpreting services to a cabinet program shall:

(a) Comply with:

1. 735 KAR 2:040 if the interpreter is retained through KCDHH Interpreter Referral Services Program; and

2. Licensure requirements of the Kentucky Board of Interpreters for the Deaf and Hard of Hearing in accordance with KRS 309.300-309.319 and 201 KAR Chapter 39; and

(b) Agree to confidentiality in the provision of interpreting services in accordance with KRS 194A.060, 45 C.F.R. 160, 162, 164, and Pub.L. 104-191.

Section 4. Client Rights. (1) A cabinet program shall inform a client who is deaf or hard of hearing of the client's right to effective communication through the provision of the CHFS-OHRM-EEO-2, Your Right to Equally Effective Communication.

(2)(a) A client who is deaf or[~~of~~] hard of hearing shall have the right to waive interpreting services provided by a cabinet program.

(b) To waive interpreting services:

1. A client shall complete and sign the CHFS-OHRM-EEO-3, Waiver of Free Interpreting Services; and

2. The cabinet program shall provide a copy of the signed CHFS-OHRM-EEO-3 to the client.

(c) A client may rescind the CHFS-OHRM-EEO-3 at any time.

(3) If a client refuses a specific interpreter, a cabinet program shall attempt to find a replacement but shall not guarantee a replacement.

Section 5. Payment for Interpreting Services. (1)(a) Unless an emergency exists, a cabinet program shall approve payment for interpreting services, whether time-limited or ongoing interpreting services, with an interpreter prior to the provision of interpreting services to a client.

(b) The total payment approved shall:

1. Be documented in writing;

2. Be copied or shared with the interpreter and the cabinet program;

3. Include identifying information about the cabinet program and the assignment; and

4. Include a breakdown of the interpreter's:

a. Hourly rate in accordance with subsection (3) of this section;

b. Projected number of hours for the assignment in accordance with subsection (4) of this section;

c. Projected mileage;

d. Meal required during the assignment; and

e. Overnight lodging requested for the assignment in accordance with paragraph (c) of this subsection.

(c) An overnight lodging request for interpreting services shall include:

1. A justification for the overnight lodging;

2. The estimated length of the lodging;

3. A preferred lodging establishment; and

4. Projected lodging costs.

(2) Mileage and meal reimbursement shall be in accordance with 200 KAR 2:006.

(3)(a) A cabinet program shall pay an interpreter an hourly rate:

1. For interpreting services provided Monday through Friday between the hours of 8 a.m. and 5 p.m.; and

2. Consistent with the prevailing rate for the service area.

(b) In addition to the hourly rate established in paragraph (a) of this subsection, a cabinet program shall pay an enhanced hourly rate consistent with the prevailing enhanced rate for the service area if the interpreter's assignment falls:

1. Between 5 p.m. and 8 a.m. Monday through Friday;

2. Between 5 p.m. Friday and 8 a.m. Monday; or

3. On a state holiday established in accordance with KRS 2.110.

(c) The cabinet shall consult annually with KCDHH regarding accessibility and the provision of accommodations.

(4)(a) With the exception of mileage, a meal, and lodging, the hourly rate established in accordance with subsection (3) of this section, shall include:

1. Time on the assignment; and

2. Reasonable time traveling for the assignment.

(b) A cabinet program shall determine an interpreter's time traveling as reasonable based on:

1. Mileage; and

2. Road and driving conditions on the date of the interpreter's assignment.

(5) If an interpreter's assignment in a cabinet program is less than two (2) hours, the cabinet program shall pay:

(a) Two (2) hours for the assignment; or

(b) Less than two (2) hours in accordance with the invoice submitted for the assignment.

(6)(a) A cabinet program shall pay an interpreter for the assignment in accordance with the payment approved pursuant to subsection (1) of this section if:

1. A client does not appear for an appointment or cancels an appointment with less than twenty-four (24) hours' notice; or

2. The cabinet fails to notify the interpreter of the cancellation twenty-four (24) hours or more in advance of the appointment.

(b) The cabinet shall re-schedule an appointment if:

1. A request to re-schedule is received two (2) business days in advance of the appointment; or

2.a. The cabinet determines that staff of the cabinet program, the interpreter, or the client is not at fault for failure to keep the appointment; and

b. The client requests re-scheduling of the appointment.

(7)(a) An interpreter shall:

1. Document actual costs of interpreting services to a cabinet program; and

2. Submit an invoice to the cabinet program for verification and payment.

(b) For each assignment, an interpreter's invoice shall contain the following:

1. The purpose of the assignment, including the client's name or an identifier for the client's case;

2. For each date of the assignment, the:

a. Hours of the day during which the interpreting services were provided;

b. Total number of hours of the interpreting services;

c. Hourly rate for the interpreting services;

d. Mileage for the assignment; and

e. Rate per mile in accordance with subsection (2) of this section;

3. The total cost for any lodging;

4. A grand total for all costs;

5. Contact information for an employee with the cabinet program to verify:

a. The provision of interpreting services; and

b. Costs approved in accordance with subsection (1) of this section;

6. The interpreter's:

a. Name;

b. Social Security number or federal identification number;

c. Contact number;

d. Email address, if one is available; and

e. Mailing address;

7. The date of the invoice; and

8. A number for the invoice.

(c) If an interpreter submits an invoice to a cabinet program that includes lodging, the interpreter shall attach the original receipt from the lodging establishment.

(8)(a) Payment for interpreting services shall be available to an interpreter who is not:

1. A volunteer; or

2. An employee of a cabinet program.

(b) An employee of a cabinet program, who is utilized in accordance with Section 2(5) of this administrative regulation, shall not receive payment for interpreting services in addition to the employee's:

1. Pay and employee benefits from the cabinet program; and

2. Reimbursement for travel in accordance with 200 KAR 2:006.

Section 6. Complaints. If an individual is aggrieved by a cabinet program's provision of, or failure to provide, interpreting services in accordance with this administrative regulation, the individual may submit a:

(1) Grievance to the KCDHH in accordance with 735 KAR 2:060; or

(2) Client Civil Rights complaint, if discriminatory action by a cabinet program is alleged, to the:

(a) Office of Human Resource Management in accordance with 920 KAR 1:090;

(b) U.S. Department of Health and Human Services' Office for Civil Rights;

(c) U.S. Department of Agriculture's Office of Assistant Secretary for Civil Rights or Food and Nutrition Service Southeast Regional Office;

(d) U.S. Department of Education's Office for[~~of~~] Civil Rights;

(e) U.S. Department of Labor's Civil Rights Center;

(f) U.S. Department of Justice's Civil Rights Division;

(g) Kentucky Commission on Human Rights; or

(h) Another federal, state, or local agency with jurisdiction over the cabinet program involved in the alleged discrimination.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CHFS-OHRM-EEO-2, Your Right to Equally Effective Communication", edition 2020[~~2010~~]; and

(b) "CHFS-OHRM-EEO-3, Waiver of Free Interpreting Services", edition 2020[~~2010~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Office of Human Resource Management, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TRESA STRAW, Chief of Staff
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: November 4, 2019

FILED WITH LRC: November 8, 2019 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 27, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2020. 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: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091, CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: H. Jay Klein, phone (502) 564-7770 x3368, email: Jayh.klein@ky.gov.; and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes Cabinet for Health and Family Services procedures for the provision of interpreting services to a client who is deaf or hard of hearing.

(b) The necessity of this administrative regulation: Federal law requires the provision of interpreting services to a client who is deaf or hard of hearing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation provides detailed procedures for the provision of such services and includes clients' rights, details as to payment for interpreting services, complaint options and specific forms.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides the specifics as to definitions, the provision of interpreting services, interpreter selection, client rights, payment for interpreting services, complaints and forms.

(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 makes a technical correction to a state statute citation and revises the two forms incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The United States Department of Agriculture, Office of Civil Rights through an audit has identified the necessity of revising the two forms incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: The revised forms will better inform a client of the right to equally effective communication and provide a better understanding when choosing to waive free interpreting services.

(d) How the amendment will assist in the effective administration of the statutes: The revised forms will have more details and include the United States Department of Agriculture nondiscrimination statement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Cabinet for Health and Family Services and its clients.

(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 Cabinet for Health and Family Services will need to replace the outdated forms with the revised forms in each of its departments and offices.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost, for the various cabinet entities will be printing the revised forms as needed instead of the old forms.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The cabinet will be in compliance with the United States Department of Agriculture, Office of Civil Rights requirements.

(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: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will be applied in a like manner statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 28 C.F.R. 35.160, 29 U.S.C. 794, 42 U.S.C. 12131 – 12213, KRS 12.290, and KRS 344.500(1).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? Not applicable.

(d) How much will it cost to administer this program for subsequent years? Not applicable.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 28 C.F.R. 35.160, 29 U.S.C. 794, and 42 U.S.C. 12131 – 12213.

2. State compliance standards. KRS 12.290 and KRS 344.500(1).

3. Minimum or uniform standards contained in the federal mandate. The requirement to provide accessibility to program services to an individual who is deaf or hard of hearing.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

**CABINET FOR HEALTH AND FAMILY SERVICES**
**Department for Community Based Services**
**Division of Family Support**
**(Amendment)**

**921 KAR 3:050. Claims and additional administrative provisions.**

RELATES TO: 7 C.F.R. 272.1, 272.5, 272.6, 273.16, 273.17, 273.18, 26 C.F.R. 301.6402-6

STATUTORY AUTHORITY: KRS 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 273.18

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain individuals, families, and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires each state to administer a Supplemental Nutrition Assistance Program (SNAP). 7 C.F.R. 273.18 requires the agency administering SNAP to develop a process to establish and collect claims. This administrative regulation establishes the criteria for recipient claims, collections provisions, and additional provisions used by the cabinet in the administration of SNAP.

Section 1. Responsibility for a Claim. The following individuals shall be responsible for paying a recipient claim as defined in 921 KAR 3:010:

(1) An individual who was an adult member of the household during the time period when the overissuance or trafficking occurred;

(2) A sponsor of an alien household member if the sponsor is at fault; or

(3) A person connected to the household, such as an authorized representative, who actually traffics or otherwise causes an overissuance or trafficking.

Section 2. Claim Category. (1) As established[~~specified~~] in 921 KAR 3:010, a recipient claim shall be classified as an:

(a) Inadvertent household error (IHE);

(b) Agency error (AE); or

(c) Intentional program violation (IPV).

(2) A suspected intentional program violation (SIPV) shall be:

(a) Established if fraud is suspected, but the client does not admit to committing fraud;

(b) Referred to court or an administrative hearing for a fraud determination; and

(c) Changed to an:

1. IHE category without decreasing the claim period or recalculating the claim if fraud is not substantiated; or

2. IPV category if fraud is substantiated.

Section 3. Acting on a Change. (1) A claim shall be established if a household:

(a) Fails to report a change in circumstance in accordance with the timeframes established[~~specified~~] in 921 KAR 3:035; or

(b) Reports a change within the required timeframe, but the cabinet fails to act on the change within ten (10) days of the date the change is reported.

(2) The first month of overissuance, as defined in 921 KAR 3:010, shall:

(a) Be the first month that the change would have been effective had it been timely:

1. Reported by the household; or
2. Acted upon by the cabinet; and
(b) Not exceed two (2) months from the month the change in circumstance occurred.

Section 4. Calculating the Amount of a Recipient Claim. (1) In accordance with 7 C.F.R. 273.18(c), unless a claim is related to trafficking, the cabinet shall:
(a) Calculate:
1. An AE claim back to twelve (12) months prior to when the cabinet became aware of the overissuance; and
2. An IHE claim back to the month the overissuance first occurred, but not more than six (6) years prior to when the cabinet became aware of the overissuance; and
3. An IPV or an SIPV claim back to the month the fraudulent act first occurred, but not more than six (6) years prior to when the cabinet became aware of the overissuance;
(b) Determine the correct amount of SNAP benefits for each month that a household received an overissuance;
(c) Not apply the earned income deduction to the portion of earned income that a household failed to report in a timely manner, as specified in Section 3 of this administrative regulation, if:
1. The claim is classified as an IPV, SIPV, or IHE; and
2. The IHE, SIPV, or IPV is the basis for the recipient claim;
(d) Subtract the correct amount of SNAP benefits from the benefits actually received and the difference shall be the amount of the overissuance; and
(e) Deduct any SNAP benefits that are designated to be expunged from a household's EBT account from the amount of overissuance:
1. When the recipient claim is initially calculated; and
2. At each subsequent expungement until the balance of the claim is paid in full.
(2) If a claim is related to trafficking, the cabinet shall calculate the value of the trafficked SNAP benefits as determined by:
(a) An individual's admission;
(b) Adjudication; or
(c) The documentation that forms the basis for the trafficking determination.
(3) The amount of a claim may differ from a calculation obtained through the methods outlined in subsections (1) and (2) of this section if a different amount is ordered by:
(a) An administrative hearing officer or agency head in accordance with: 921 KAR 3:060 or 921 KAR 3:070; or
(b) A court.
(4) In accordance with 7 C.F.R. 273.18(e)(2), the cabinet shall not establish a recipient claim if the claim referral is seventy-five (75) dollars or less, unless the:
(a) Household is currently participating in SNAP;
(b) Recipient claim was established or discovered through a quality control review; or
(c) The basis of the claim is trafficking SNAP benefits.

Section 5. KCD-1 and KCD-3. (1) The[~~A~~] KCD-1, Demand[~~General Claims~~] Notice, shall serve as the demand letter [~~many purposes~~] in the administration of claims collections.
(2) The KCD-3, General Claims Notice, shall serve as a general notification regarding a claim, including the use as:
(a) An appointment notice;
(b) A secondary demand letter;
(c) Notification of benefit reduction;
(d) A past due notice;
(e) A repayment agreement;
(f) A claim adjustment notice;
(g) A claim termination notice;
(h) A payment receipt;
(i) Notice of a suspended claim;
(j) Notice of a claim being paid in full; or
(k) Notification that a delinquent claim shall be sent to the U.S. Department of Treasury for collection.
(3)[~~(2)~~] The language on the KCD-3[~~1~~] shall differ according to the purpose of the notice as described in subsection (2)[~~(1)~~] of this section.

Section 6. Notification of a Claim. (1) A household with a suspected claim shall be mailed a KCD-3[~~1~~] notifying the household of an appointment to:
(a) Discuss the potential claim;
(b) Determine the classification of the claim, as established[~~specified~~] in Section 2 of this administrative regulation; and
(c) Offer the recipient an opportunity to waive the administrative disqualification hearing if the claim is suspected to be an IPV.
(2) If a household requests to reschedule the appointment within ten (10) days of the date of the notice, the appointment shall be rescheduled.
(3) The cabinet shall determine the classification and the amount of the recipient claim based on the information that is available to the cabinet if the household:
(a) Fails to attend the appointment to discuss the potential claim; and
(b) Does not contact the cabinet to reschedule the appointment.
(4) When the cabinet determines the amount of a recipient claim, in accordance with Section 4 of this administrative regulation, collection shall be initiated and a KCD-1 shall be mailed to notify the household of the claim:
(a) Amount;
(b) Time period;
(c) Reason; and
(d) Category, as established[~~specified~~] in Section 2 of this administrative regulation.
(5) The household shall return the KCD-1 within ten (10) days of receipt if the household chooses to:
(a) Initiate a repayment agreement; or
(b) Request a hearing on the claim.

Section 7. Collection Methods. (1) Benefit reduction.
(a) A household that is participating in SNAP shall have payments on the claim made by reducing its monthly SNAP benefits through benefit reduction by the following amount:
1. For an IPV claim, the amount reduced shall be the greater of twenty (20) dollars per month or twenty (20) percent of the household's monthly benefits or entitlement, unless the household agrees to a higher amount; or
2. For an IHE or AE claim, the amount reduced shall be the greater of ten (10) dollars per month or ten (10) percent of the household's monthly benefits, unless the household agrees to a higher amount.
(b) The cabinet shall not use additional collection methods against individuals in a household that is already having its benefits reduced unless the:
1. Additional payment is voluntary; or
2. Source of the payment is irregular and unexpected such as a federal or state tax refund or lottery winnings offset.
(2) A household may pay its claim using SNAP benefits from its EBT account if the household gives the cabinet permission:
(a) By completing and returning a KCD-1, KCD-3, or other written statement requesting this option; or
(b) Through an oral request for a one (1) time reduction and the cabinet provides the household with a receipt for the transaction within ten (10) days.
(3) If the cabinet becomes aware of expunged SNAP EBT benefits, the claim balance shall be reduced by an amount equal to the expunged benefits.
(4) During the claim establishment and collection process, the cabinet shall:
(a) Deduct the amount of an outstanding recipient claim from SNAP benefits that may be owed to a household; and
(b) Send the household a KCD-3[~~1~~] as notification of the adjustment.
(5) A lump sum payment on a recipient claim:
(a) Shall be accepted by the cabinet; and
(b) May be a full or partial payment.
(6) If a household is not participating in SNAP, the cabinet shall:
(a) Negotiate a repayment agreement, either orally or in

writing, which includes a repayment schedule; and

(b) Employ additional collection methods if the claim becomes delinquent through the household's failure to submit a payment in accordance with the negotiated repayment agreement.

(7) In accordance with 7 C.F.R. 273.18(g), the cabinet may employ other collection methods to collect a recipient claim, such as:

(a) Referral to a public or private sector collection agency;

(b) Lottery offsets;

(c) Wage garnishment;

(d) The intercept of unemployment compensation benefits;

(e) State income tax refund intercept; or

(f) The intercept of any eligible federal payment owed the debtor through the Treasury Offset Program (TOP).

(8) The cabinet shall:

(a) Refer a recipient claim that is delinquent for 180 or more days to TOP, unless the debtor is a member of a participating household that is undergoing benefit reduction to collect a recipient claim; and

(b) Remove a recipient claim from TOP if the:

1. FNS or U.S. Department of the Treasury instructs the cabinet to withdraw a recipient claim;

2. Cabinet discovers that the debtor:

a. Is a member of a SNAP household undergoing benefit reduction; or

b. Has made an arrangement to resume payments; or

3. Claim:

a. Has been paid off;

b. Was disposed of through a hearing, termination, or compromise; or

c. Was referred to TOP in error.

Section 8. Delinquent Recipient Claims. (1) In accordance with 7 C.F.R. 273.18(e)(5), a recipient claim shall be considered delinquent if:

(a) The claim has not been paid by the due date and a satisfactory payment arrangement has not been made; or

(b) A payment arrangement has been established and a scheduled payment has not been made by the due date.

(2) The date of delinquency for a claim shall be the due date on the:

(a) Initial written notification if the claim meets the criteria of subsection (1)(a) of this section; or

(b) Missed installment payment if the claim meets the criteria of subsection (1)(b) of this section.

(3) Pursuant to 7 C.F.R. 273.18(e)(5)(ii), the claim shall remain delinquent until:

(a) Payment is received in full;

(b) Benefit reduction, as described in Section 7 of this administrative regulation, is implemented; or

(c) A satisfactory payment agreement is negotiated for a claim meeting the criteria of subsection (1)(a) of this section.

(4) A claim shall not be considered delinquent if:

(a) Another claim for the same household is currently being paid either through an installment agreement or benefit reduction; and

(b) The cabinet expects to begin collection on the claim once the prior claim is settled.

(5) If the cabinet is unable to determine delinquency status because claim collection is coordinated through the court system, a claim shall not be subject to the requirements for delinquent debts.

(6) A claim awaiting a fair hearing decision shall not be considered delinquent.

(7) If a hearing official determines that a claim does, in fact, exist against the household, the cabinet shall:

(a) Renotify the household of the claim; and

(b) Base delinquency on the due date of the subsequent notice.

(8) If a hearing official determines that a claim does not exist, the cabinet shall:

(a) Dispose of the recipient claim in accordance with Section 9(2) of this administrative regulation; and

(b) Send a KCD-3[~~1~~] to notify the household of the terminated claim.

Section 9. Compromising, Terminating, and Writing-off Claims. (1) Except for a recipient claim that is established by a court of the appropriate jurisdiction, the cabinet may compromise a claim in accordance with 7 C.F.R. 273.18(e)(7).

(2) In accordance with 7 C.F.R. 273.18(e)(8), a claim shall be terminated and written off if:

(a) The claim:

1. Is invalid, unless it is appropriate to pursue the overissuance as a different type of claim;

2. Balance is twenty-five (25) dollars or less and the claim has been delinquent for ninety (90) days or more, unless other claims exist against the household resulting in an aggregate claim total of greater than twenty-five (25) dollars; or

3. Has been delinquent for at least three (3) years and, in accordance with 7 C.F.R. 273.18(n), cannot be pursued through TOP;

(b) All adult household members, as specified in Section 1(1) of this administrative regulation, are deceased[~~die~~]; or

(c) The cabinet is unable to locate the household.

Section 10. Restoration of Benefits. (1) Benefits shall be restored to a household if the household has lost benefits:

(a) Due to an administrative error; or

(b) By an administrative disqualification for an IPV that is subsequently reversed.

(2) Benefits shall be restored for a period of not more than twelve (12) months from the date:

(a) The agency receives a request for restoration; or

(b) A final order is implemented, if no request for restoration is received.

(3) Benefits to be restored shall be calculated by determining the difference between what the household was entitled to receive and what the household actually received.

(4) Benefits to be restored shall be used to offset any unpaid or suspended claim that the household has.

Section 11. Disclosure of Information. The disclosure or use of information regarding SNAP participants shall be restricted to an individual who meets the criteria established[~~specified~~] in 7 C.F.R. 272.1(c).

Section 12. Retention of Records. (1) In accordance with 7 C.F.R. 272.1(f), the cabinet shall retain program records:

(a) In an orderly fashion, for audit and review purposes; and

(b) Except for records specified in subsection (2) of this section, for a period of three (3) years from the:

1. Month of origin of each record; or

2. Date of fiscal or administrative closure for fiscal records and accountable documents, such as claims.

(2) The cabinet shall retain records on IPV disqualifications and work violations indefinitely.

Section 13. Civil Rights Compliance. In accordance with 7 C.F.R. 272.6, the cabinet shall not discriminate in any aspect of program administration on the basis of age, race, color, sex, disability, religion, political beliefs, or national origin.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KCD-1, Demand[~~General Claims~~] Notice", 1/17; and

(b) "KCD-3, General Claims Notice", 03/20[~~, is incorporated by reference~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ERIC T. CLARK, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 24, 2019

FILED WITH LRC: October 30, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested,

be held on January 27, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2020. 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: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contacts: Laura Begin, Phone Number: (502) 564-3703, Email: Laura.Begin@ky.gov.; and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria for recipient claims, collection provisions, and additional provisions used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish criteria for recipient claims, collections, and additional administrative provisions used by the cabinet for SNAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing criteria for recipient claims, collections, and additional cabinet administrative provisions for SNAP.

(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 criteria for recipient claims, collections, and additional administrative provisions used by the cabinet in the administration of SNAP.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates the use of a new notice, the KCD-3, for general claims notices. This general notice does not contain administrative hearing rights information as those are only provided with the issuance of the KCD-1, the claims demand notice. Hearing rights do not apply to secondary notices of action on the same claim case.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to properly inform recipients of hearing rights only when they are applicable.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes through its enhancement of claim, collection, and additional administrative provisions used by the cabinet in the administration of SNAP.

(d) How the amendment will assist in the effective administration of the statutes: The amendment conforms to the authorizing statutes through its enhancement of claim, collection notification, and additional administrative provisions used by the cabinet in SNAP.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of July 2019, there were 233,300 active SNAP households potentially impacted 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: This amendment will require no new action on the part of SNAP applicants or recipients. The amendment only clarifies when administrative hearing rights are applicable.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to SNAP applicants or recipients.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of this amendment, communication to the entities identified above will be clearer and notification of hearing rights will be provided at only the correct stage of the claim process.

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

(a) Initially: The amendment to this administrative regulation is estimated to incur expenses of less than $100,000 to implement the new notice form.

(b) On a continuing basis: No ongoing expenses are anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded. Administrative functions are funded at a 50% state and 50% federal match rate. The funding has been appropriated in the enacted 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: There is no increase in fees or funding required to implement this administrative regulation amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 273.18

2. State compliance standards. KRS 194A.010(2), 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 273.18

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation. KRS 194A.010(2), KRS 194A.050(1), 7 C.F.R. 271.4, 273.18

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation is estimated to incur expenses of less than $100,000 to implement the new notice form.

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

RELATES TO: KRS Chapter 13B, Chapter 157, 158.030, 199.011(3), (4), (16), 199.892, 199.894(1), (3), 199.895, 199.896-[,]199.898, 214.010, 214.036, 314.011(5), 600.020(1), 620.020(8), 620.030, 45 C.F.R. 98.2, 98.43, 42 U.S.C. 601-619, 9831-9852, 9857-9858r[42 U.S.C. 9857-9858q]

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), (6)

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

Section 1. Definitions. (1) "Applicant" means an individual or entity applying to become a licensee or renew status as a licensee.

(2) "Cabinet" is defined by KRS 199.011(3) and 199.894(1).

(3) "Child" is defined by KRS 199.011(4).

(4) "Child care" means care of a child in a center or home that regularly provides full or part-time care, day or night, and includes developmentally appropriate play and learning activities.

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

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

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

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

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

(a) Physician;

(b) Physician assistant;

(c) Advanced practice registered nurse; or

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

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

(11)[(10)] "Licensee" means the owner or operator of a child-care center to include:

(a) Sole proprietor;

(b) Corporation;

(c) Limited liability company;

(d) Partnership;

(e) Association; or

(f) Organization, such as:

1. Board of education;[,]

2. Private school;

3. Faith-based organization;

4. Government agency; or

5. Institution.

(12)[(11)] "Nontraditional hours" means the hours of:

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

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

(13)[(12)] "Parent" is defined by 45 C.F.R. 98.2.

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

(a) Distribution of a newsletter;

(b) Distribution of a program calendar; or

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

(15)[(14)] "Pediatric abusive head trauma" is defined by KRS 620.020(8).

(16)[(15)] "Premises" means the building and contiguous property in which child care is licensed.

(17)[(16)] "Preschool-age" means a child who is older than a toddler and younger than school-age.

(18)[(17)] "Qualified substitute" means a person who meets the requirements of a staff person established in Section 11 of this administrative regulation.

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

(20)[(19)] "Secretary" is defined by KRS 199.011(16).

(21)[(20)] "Toddler" means a child between the age of twelve (12) and thirty-six (36) months.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. Application. (1) An applicant for a license shall submit to the cabinet a completed OIG-DRCC-01, Initial Child-Care Center License Application.

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

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

(4) If the applicant for licensure is a:

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

(b) Partnership, the application shall include:

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

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

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

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

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

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

1. The cabinet's Office of the Inspector General; or

2. An agency with investigative authority; and

(b) Is requesting a:

1. Change in ownership; or

2. License for a new facility.

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

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

Section 5. Evacuation Plan. (1) A licensed child-care center shall have a written evacuation plan in the event of a fire, natural disaster, or other threatening situation that may pose a health or safety hazard for a child in care in accordance with KRS 199.895 and 42 U.S.C. 9858c(c)(2)(U).

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

(a) Fulfills requirements of KRS 199.895;

(b) Is optional for a child-care center's use; and

(c) Is available to a licensed child-care center without charge.

Section 6. License Issuance. (1) The cabinet shall monitor a child-care center that operates under a preliminary license issued pursuant to Section 4(2) of this administrative regulation.

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

(a) Approve regular licensure for a child-care center operating under a preliminary license; or

(b) If a condition specified in Section 17 [~~16~~] of this administrative regulation exists, deny regular licensure.

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

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

(a) An applicant;

(b) A director;

(c) An employee who is present during the time a child is receiving care;

(d) Any person with supervisory or disciplinary control over a child in care; or

(e) A person in accordance with 42 U.S.C. 9858f and 45 C.F.R. 98.43.

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

(a) A seven (7) year period has expired from the:

1. Date of the prior denial or revocation;

2. Date the certification, license, or registration was voluntarily relinquished as a result of an investigation or pending adverse action;

3. Last day of legal remedies being exhausted; or

4. Administrative hearing decision; and

(b) The applicant has:

1. Demonstrated compliance with the provisions of this administrative regulation, 922 KAR 2:120, 922 KAR 2:280, and KRS 199.896;

2. Completed, since the time of the prior denial, revocation, or relinquishment, sixty (60) hours of training in child development and child care practice, approved by the cabinet or its designee; and

3. Not had an application, certification, license, or registration denied, revoked, or voluntarily relinquished as a result of an investigation or pending adverse action:

a. For one (1) of the reasons set forth in:

(i) KRS 199.896(19); or

(ii) 922 KAR 2:280; or

b. Due to a disqualification from:

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

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

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

(7) A preliminary or regular license shall specify:

(a) A particular premises;

(b) A designated licensee;

(c) Age category of the children in care;

(d) The maximum number of children allowed under center supervision at one (1) time, including a child related to the licensee or an employee, based upon:

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

2. Adequacy of program;

3. Equipment; and

4. Staff;

(e) If provided, nontraditional hours;

(f) If provided, transportation; and

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

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

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

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

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

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

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

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

1. An investigation of an alleged complaint, including an allegation of child abuse or neglect pursuant to KRS 620.030 [~~620.030(4)~~]; and

2. Unannounced inspections; and

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

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

(10) Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the cabinet or another agency with regulatory authority, to enter the child-care center or deny access to records relevant to the inspection shall result in the cabinet pursuing adverse action in accordance with Section[~~15,~~] 16,[~~or~~] 17, or 18 of this administrative regulation.

(11) A regular license shall be issued if the center has met the requirements contained in this administrative regulation, 922 KAR 2:120, 922 KAR 2:280, and KRS 199.896(3),[~~(13),~~] (15), (16), (18),[~~and~~] (19), and (21).

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

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

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

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

Section 7. Fees. (1) A nonrefundable initial licensing fee of fifty (50) dollars shall be charged according to KRS 199.896(3).

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

(3) Licensing fees shall be:

(a) Payable to the Kentucky State Treasurer;

(b) Attached to the licensure application; and

(c) Paid by:

1. Cashier's check;

2. Certified check;

3. Business check; or

4. Money order.

Section 8. General. (1) A licensee shall be responsible for the operation of the child-care center pursuant to this administrative regulation, 922 KAR 2:120, and 922 KAR 2:280.

(2) Child-care center staff shall be:

(a) Instructed by the child-care center's director regarding requirements for operation; and

(b) Provided with a copy of this administrative regulation, 922 KAR 2:120, and 922 KAR 2:280.

(3) A volunteer or board member shall comply with the policies and procedures of the child-care center.

(4) Program policies and procedures shall:

(a) Be in writing; and

(b) Include:

1. Staff policies;

2. Job descriptions;

3. An organization chart;

4. Chain of command; and

5. Other procedures necessary to ensure implementation of:

a. KRS 199.898, Rights for children in child-care programs and their parents, custodians, or guardians - posting and distribution requirements;

b. 922 KAR 2:120, Child-care center health and safety standards;

c. 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals; and

d. This administrative regulation.

(5) An activity of a person living in a child-care center that is a dwelling unit shall not interfere with the child-care center program.

(6) In addition to the posting requirement of KRS 199.898(3), a child-care center shall post the following in a conspicuous place and make available for public inspection:

(a) The provider's preliminary or regular license;

(b) Each statement of deficiency and civil penalty notice issued by the cabinet during the current licensure year;

(c) Each plan of correction submitted by the child-care center to the cabinet during the current licensure year;

(d) Information on the Kentucky Consumer Product Safety Program and the program's Web site as specified in KRS 199.897;

(e) A description of services provided by the child-care center, including:

1. Current rates for child care; and

2. Each service charged separately and in addition to the basic rate for child care;

(f) Minimum staff-to-child ratios and group size established in 922 KAR 2:120; and

(g) Daily planned program.

(7) If a director, employee, volunteer, or any person with supervisory or disciplinary control over, or having unsupervised contact with a child in care is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:

(a) For the duration of the assessment or investigation; and

(b) Pending completion of the administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

Section 9. Records. (1) A child-care center shall maintain:

(a) A current immunization certificate for each child in care within thirty (30) days of the child's enrollment, unless an attending physician or the child's parent objects to the immunization of the child pursuant to KRS 214.036;

(b) A written record for each child:

1. Completed and signed by the child's parent;

2. Retained on file on the first day the child attends the child-care center; and

3. To contain:

a. Identifying information about the child, which includes, at a minimum, the child's name, address, and date of birth;

b. Contact information to enable a person in charge to contact the child's:

(i) Parent at the parent's home or place of employment;

(ii) Family physician; and

(iii) Preferred hospital;

c. The name of each person who is designated in writing to pick-up the child;

d. The child's general health status and medical history including, if applicable:

(i) Allergies;

(ii) Restriction on the child's participation in activities with specific instructions from the child's parent or health professional; and

(iii) Permission from the parent for third-party professional services in the child-care center;

e. The name and phone number of each person to be contacted in an emergency involving or impacting the child;

f. Authorization by the parent for the child-care center to seek emergency medical care for the child in the parent's absence; and

g. A permission form for each trip off the premises signed by the child's parent in accordance with 922 KAR 2:120, Section 12;

(c) Daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 13, if a child receives services from the child-care center through the Child Care Assistance Program;

(d) A written schedule of staff working hours;

(e) A current personnel file for each child-care center staff person to include:

1. Name, address, date of birth, and date of employment;

2. Proof of educational qualifications;

3. Record of annual performance evaluation;

4. Documentation of compliance with tuberculosis screening in accordance with Section 11(1)(b) of this administrative regulation; and

5. The results of background checks conducted in accordance with 922 KAR 2:280;

(f) A written annual plan for child-care staff professional development;

(g) A written evacuation plan in accordance with Section 5 of this administrative regulation;

(h) A written record of quarterly practiced earthquake drills and tornado drills detailing the date, time, and children who participated in accordance with 922 KAR 2:120, Section 3;

(i) A written record of practiced fire drills conducted monthly detailing the date, time, and children who participated in accordance with 922 KAR 2:120, Section 3;

(j) A written plan and diagram outlining the course of action in the event of a natural or manmade disaster, posted in a prominent place;

(k) A written record of reports to the cabinet required in Section 13[~~12~~] of this administrative regulation; and

(l) A written record of transportation services provided in accordance with 922 KAR 2:120, Section 12.

(2) A child-care center shall:

(a) Maintain the confidentiality of a child's record and information concerning a child or the child's parent;

(b) Maintain all records for five (5) years; and

(c) Provide the cabinet access and information in the completion of the investigation pursuant to KRS 620.030[~~620.030(4) and (5)~~].

Section 10. Director Requirements and Responsibilities. (1) A director shall:

(a) Be at least twenty-one (21) years of age;

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

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

(d) Ensure:

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

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

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

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

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

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

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

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

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

(l) Assure the health, safety, and comfort of each child;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. A licensed or certified child-care program;

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

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

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

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

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

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

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

3. A licensed or certified child-care program.

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

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

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

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

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

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

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

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

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

Section 11. Staff Requirements. (1) Child-care center staff:

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

1. High school diploma;

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

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

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

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

2. A copy of negative tuberculin results.

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

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

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

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

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

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

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

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

(a) Infant and child cardiopulmonary resuscitation; and

(b) Infant and child first aid.

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

(a) Adult cardiopulmonary resuscitation; and

(b) First aid.

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

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

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

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

(7) Each qualified substitute staff person shall:

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

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

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

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

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

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

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

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

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

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

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

(12) Alcohol shall:

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

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

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

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

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

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

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

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

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

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

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

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

Section 12. Contract Substitute Staff Requirements. (1) A contract substitute staff member shall:

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

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

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

(d) Be entered into the cabinet-designated database as a staff member of the outside organization in accordance with 922 KAR 2:240;

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

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

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

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

(b) A child development associate credential.

Section 13. Reports. (1) The following shall be reported to the cabinet or designee and other agencies specified in this section within twenty-four (24) hours from the time of discovery:

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

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

(c) An incident that results in legal action by or against the child-care center that:

1. Affects a child or staff person; or

2. Includes the center's discontinuation or disqualification from a governmental assistance program due to fraud, abuse, or

criminal conviction related to that program;

(d) An incident involving fire or other emergency, including a vehicular accident when the center is transporting a child receiving child care services;

(e) A report of child abuse or neglect that:

1. Has been accepted by the cabinet in accordance with 922 KAR 1:330; and

2. Names a director, employee, volunteer, or person with supervisory or disciplinary control over, or having unsupervised contact with, a child in care as the alleged perpetrator; or

(f) An individual specified in Section 6(4) of this administrative regulation meeting a disqualifying criterion or background check result pursuant to 922 KAR 2:280.

(2) An incident of child abuse or neglect shall be reported to the cabinet pursuant to KRS 620.030.

(3) A licensee shall report to the cabinet within one (1) week:

(a) Any resignation, termination, or change of director; and

(b) The name of the acting director who satisfies the requirements of Section 10 of this administrative regulation.

(4)(a) Written notification of the following shall be:

1. Made to the cabinet, in writing, to allow for approval before implementation:

a. Change of ownership;

b. Change of location;

c. Increase in capacity;

d. Change in hours of operation;

e. Change of services in the following categories:

(i) Infant;

(ii) Toddler;

(iii) Preschool-age;

(iv) School-age;

(v) Nontraditional hours; or

(vi) Transportation; or

f. Addition to or reduction of the square footage of a child-care center's premises; and

2. Signed by each owner listed on the preliminary or regular license.

(b) The cabinet or its designee shall not charge a fee for acting upon reported changes.

(5) The death of a child in care shall be reported to the cabinet within one (1) hour.

(6) The cabinet and the parent of a child enrolled in a child-care center shall receive notice as soon as practicable, and prior to, a child-care center's temporary or permanent closure.

Section 14[~~13~~]. Annual Renewal. (1)(a) A regular license shall expire one (1) year from the effective date or last renewal date unless the licensee renews the regular license in accordance with this section and KRS 199.896(3).

(b) A preliminary license shall expire six (6) months from the date of issuance.

(c) A regular license that expires shall lapse and shall not be subject to appeal.

(2) A licensee seeking renewal of a regular license shall:

(a) Submit one (1) month prior to the anniversary of the regular license's effective date, an OIG-DRCC-06, Child-Care Center License Renewal Form;

(b) Meet the requirements specified in Sections 4 through 13[~~12~~] of this administrative regulation; and

(c) Pay the nonrefundable renewal fee in accordance with Section 7 of this administrative regulation.

(3) If requirements of subsection (1) of this section are met, the cabinet shall renew the license in the form of a validation letter.

(4) An application for renewal shall be denied in accordance with Section 17 [~~16~~] of this administrative regulation.

Section 15[~~14~~]. Statement of Deficiency and Corrective Action Plans. (1) If a center is found not to be in regulatory compliance, the cabinet or its designee shall complete a written statement of deficiency in accordance with KRS 199.896(5).

(2) Except for a violation posing an immediate threat as handled in accordance with KRS 199.896(5)(c), a child-care center shall submit a written corrective action plan to the cabinet or its designee within fifteen (15) calendar days of the date of the statement of deficiency to eliminate or correct the regulatory violation.

(3) A corrective action plan shall include:

(a) Specific action undertaken to correct a violation;

(b) The date action was or shall be completed;

(c) Action utilized to assure ongoing compliance;

(d) Supplemental documentation requested as a part of the plan; and

(e) Signature of the licensee or designated representative of the licensee and the date of signature.

(4) The cabinet or its designee shall review the plan and notify the child-care center within thirty (30) calendar days of receipt of the plan, in writing, of the decision to:

(a) Accept the plan;

(b) Not accept the plan; or

(c) Deny, suspend, or revoke the child-care center's license, in accordance with Section 17[~~16~~] of this administrative regulation.

(5) A notice of unacceptability shall state the specific reasons the plan is unacceptable.

(6) A child-care center notified of the unacceptability of its plan shall:

(a) Within fifteen (15) calendar days of the notification's date, submit an amended plan; or

(b) Have its license revoked or denied for failure to:

1. Submit an acceptable amended plan in accordance with KRS 199.896(4); or

2. Implement the corrective measures identified in the plan of correction.

(7) The cabinet shall not review or accept more than three (3) corrective action plans from a licensed child-care center in response to the same written statement of deficiency.

(8) If a licensed child-care center fails to submit an acceptable corrective action plan or does not implement corrective measures in accordance with the corrective action plan, the cabinet shall deny or revoke the center's license.

(9) The administrative regulatory violation reported on a statement of deficiency that poses an immediate threat to the health, safety, or welfare of a child shall be corrected within five (5) working days from the date of the statement of deficiency in accordance with KRS 199.896(5)(c).

Section 16[~~15~~]. Directed Plan of Correction (DPOC). If the cabinet determines that a child-care center is in violation of this administrative regulation, 922 KAR 2:120, or 922 KAR 2:280, based on the severity of the violation, the cabinet:

(1) Shall enter into an agreement with the provider detailing the requirements for remedying a violation and achieving compliance;

(2) Shall notify or require the provider to notify a parent of a child who may be affected by the situation for which a DPOC has been imposed;

(3) Shall increase the frequency of monitoring by cabinet staff;

(4) May require the provider to participate in additional training; and

(5) May amend the agreement with the provider if the cabinet identifies an additional violation during the DPOC.

Section 17[~~16~~]. Basis for Denial, Suspension, or Revocation. (1)(a) The cabinet shall deny, suspend, or revoke a preliminary or regular license in accordance with KRS 199.896 if the applicant for licensure, director, employee, or a person who has supervisory authority over, or unsupervised contact with, a child fails to meet the requirements of this administrative regulation, 922 KAR 2:120, 922 KAR 2:280, or 922 KAR 2:190.

(b) A licensee whose regular license is suspended or revoked shall:

1. Receive a new license certificate indicating that the license is under adverse action; and

2. Post the new license certificate in accordance with Section 8(6) of this administrative regulation.

(2) Emergency Action.

(a) The cabinet shall take emergency action in accordance with KRS 199.896(4) by issuing an emergency order that suspends a child-care center's license.

(b) An emergency order shall:

1. Be served to a licensed child-care center in accordance with KRS 13B.050(2); and

2. Specify the regulatory violation that caused the emergency condition to exist.

(c) Upon receipt of an emergency order, a child-care center shall surrender its license to the cabinet.

(d) The cabinet or its designee and the child-care center shall make reasonable efforts to:

1. Notify a parent of each child in care of the center's suspension; and

2. Refer a parent for assistance in locating alternate child care arrangements.

(e) A child-care center required to comply with an emergency order issued in accordance with this subsection may submit a written request for an emergency hearing within twenty (20) calendar days of receipt of the order to determine the propriety of the licensure's suspension in accordance with KRS 199.896(7).

(f) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing in accordance with KRS 13B.125(3).

(g)1. Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the emergency order to suspend licensure.

2. The emergency order shall be affirmed if there is substantial evidence of an immediate threat to public health, safety, or welfare.

(h) A provider's license shall be revoked if the:

1. Provider does not request a hearing within the timeframes established in paragraph (e) of this subsection; or

2. Condition that resulted in the emergency order is not corrected within thirty (30) calendar days of service of the emergency order.

(3) Public information shall be provided in accordance with KRS 199.896(10) and (11), and 199.898(2)(d) and (e).

(4) Unless an applicant for a license meets requirements of Section 6(5) of this administrative regulation, the cabinet shall deny an applicant for a preliminary or regular license if:

(a) The applicant has had previous ownership interest in a child-care provider that had its certification, license, or registration denied or revoked;

(b) Denial, investigation, or revocation proceedings were initiated, and the licensee voluntarily relinquished the license;

(c) An appeal of a denial or revocation is pending;

(d) The applicant previously failed to comply with the requirements of KRS 199.896, 922 KAR 2:120, 922 KAR 2:280, 922 KAR 2:190, this administrative regulation, or another administrative regulation effective at the time;

(e) An individual with ownership interest in the child-care center has been discontinued or disqualified from participation in:

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

2. Another governmental assistance program due to fraud, abuse, or criminal conviction related to that program;

(f) The applicant is the parent, spouse, sibling, or child of a previous licensee whose license was denied, revoked, or voluntarily relinquished as described in paragraphs (a) through (d) of this subsection, and the previous licensee will be involved in the child-care center in any capacity;

(g) The applicant listed as an officer, director, incorporator, or organizer of a corporation or limited liability company whose child-care center license was denied, revoked, or voluntarily relinquished as described in paragraph (a) through (d) of this subsection within the past seven (7) years;

(h) The applicant knowingly misrepresents or submits false information on a form required by the cabinet;

(i) The applicant interferes with a cabinet or other agency representative's ability to perform an official duty pursuant to Section 6(8)(f) or 6(9) of this administrative regulation;

(j) The applicant's background check reveals that the applicant is disqualified in accordance with 922 KAR 2:280;

(k) The applicant has been the subject of more than two (2) directed plans of correction during a three (3) year period; or

(l) The applicant has failed to comply with payment provisions in accordance with 922 KAR 2:190.

(5) A child-care center's license shall be revoked if:

(a) A representative of the center interferes with a cabinet or other agency representative's ability to perform an official duty pursuant to Section 6(8)(f) or 6(9) of this administrative regulation;

(b) A cabinet representative, a representative from another agency with regulatory authority, or parent is denied access during operating hours to:

1. A child;

2. The child-care center; or

3. Child-care center staff;

(c) The licensee is discontinued or disqualified from participation in:

1. The Child Care Assistance Program as a result of an intentional program violation in accordance with 922 KAR 2:020; or

2. A governmental assistance program as a result of fraud, abuse, or criminal conviction related to that program;

(d) The licensee fails to meet a condition of, or violates a requirement of a directed plan of correction pursuant to Section 16[~~15~~] of this administrative regulation;

(e) The applicant or licensee knowingly misrepresents or submits false information on a form required by the cabinet;

(f) The licensee is the subject of more than two (2) directed plans of correction during a three (3) year period; or

(g) The licensee has failed to comply with payment provisions in accordance with 922 KAR 2:190.

(6) The cabinet or its designee shall suspend the license if:

(a) A regulatory violation is found to pose an immediate threat to the health, safety, and welfare of the children in care as described in KRS 199.896(4); or

(b) The child care-center fails to comply with the approved plan of correction.

Section 18[~~17~~]. Civil Penalty. The cabinet shall assess and enforce a civil penalty in accordance with 922 KAR 2:190.

Section 19[~~18~~]. Right of Appeal. (1) If an application has been denied or a licensee receives notice of suspension, revocation, or civil penalty, the cabinet shall inform the applicant for licensure or licensee by written notification of the right to appeal the notice of adverse action in accordance with KRS Chapter 13B and 199.896(7).

(2) An adverse action may be appealed by filing form OIG-DRCC-02, Licensed Provider Request for Appeal Hearing and/or Informal Dispute Resolution. The request shall:

(a) Be submitted to the secretary of the cabinet or designee within twenty (20) calendar days of the notice of adverse action; and

(b) Specify if an applicant for licensure or licensee requests an opportunity to informally dispute the notice of adverse action.

(3) If an applicant for licensure or a licensee files an OIG-DRCC-02 for a hearing, the cabinet shall:

(a) Appoint a hearing officer; and

(b) Proceed pursuant to KRS 13B.050.

(4) If an applicant for licensure or a licensee files a request for a hearing and a request for an informal dispute resolution, the cabinet shall:

(a) Abate the formal hearing pending completion of the informal dispute resolution process; and

(b) Proceed to informal dispute resolution.

Section 20[~~19~~]. Informal Dispute Resolution. (1) A request for informal dispute resolution shall:

(a) Accompany the request for a hearing;

(b) Identify the licensure deficiency in dispute;

(c) Specify the reason the applicant for licensure or licensee disagrees with the deficiency; and

(d) Include documentation that disputes the deficiency.

(2) Upon receipt of the written request for informal dispute resolution, the regional program manager or designee shall:

(a) Review documentation submitted by the applicant for licensure or licensee; and

(b) If requested, schedule an informal dispute resolution meeting with the applicant for licensure or licensee.

(3) The informal dispute resolution meeting shall be held within ten (10) calendar days of receipt of the request by the cabinet, unless both parties agree in writing to an extension of time.

(4) The informal dispute resolution meeting shall be conducted by:

(a) The regional program manager or designee; and

(b) A child care surveyor who did not participate in the survey resulting in the disputed deficiency.

(5) Within ten (10) calendar days of completion of the informal dispute resolution meeting or request, the regional program manager or designee shall:

(a) Issue a decision by written notification to the return address specified in the request for informal dispute resolution;

(b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and

(c) Specify whether the adverse action has been rescinded.

(6) An applicant or a licensee may:

(a) Accept the determination; or

(b) Proceed to a hearing according to KRS 13B.050.

(7) A request for informal dispute resolution shall not:

(a) Limit, modify, or suspend enforcement action against the applicant for licensure or licensee; or

(b) Delay submission of a written plan of correction.

(8) Emergency action taken in accordance with Section 17(2)[~~16(2)~~] of this administrative regulation shall conform to the requirements of KRS 199.896(4). The informal dispute resolution process shall not restrict the cabinet's ability to issue an emergency order to stop, prevent, or avoid an immediate threat to public health, safety, or welfare under KRS 13B.125(2) and 199.896(4).

Section 21[~~20~~]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "OIG-DRCC-01, Initial Child-Care Center License Application", 8/2018;

(b) "OIG-DRCC-02, Licensed Provider Request for Appeal Hearing and/or Informal Dispute Resolution", 11/2019[~~8/3/12~~]; and

(c) "OIG-DRCC-06, Child-Care Center License Renewal Form", 8/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the[~~Inspector General's~~] Office of the Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ERIC T. CLARK, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 29, 2019

FILED WITH LRC: October 30, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 27, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2020. 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: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Persons: Laura Begin, Phone Number: (502) 564-3703, Email: Laura.Begin@ky.gov; and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes licensure standards for a child-care center, and describes an applicant's and a child-care center's appeal rights and informal dispute resolution processes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a child-care center's licensure standards, appeal rights, and informal dispute resolution process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of licensure standards for a child-care center and related due process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for a child-care center license and related due process.

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

(a) How the amendment will change this existing administrative regulation: This amendment includes a definition for contract substitute staff; establishes a section outlining contract substitute staff requirements; and makes the annual documentation and tracking of training hours more useful and meaningful to child care providers, licensing staff, and quality rating improvement system staff by establishing a set timeframe for the completion of ongoing training. Material incorporated by reference, the OIG-DRCC-02, is also being amended to include more appeal options and cite statutory authority relating to appeals.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation addresses the need to formally establish standards for contract substitute staff in child care settings to ensure minimum health and safety standards are met and clarify staff requirements. This amendment also creates a yearly training cycle with an established start and end date, not tied to the staff member's hire date, to ensure all child care staff members receive the required training each year.

(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 statutes by aligning policy and providing that all providers have the same training and skills to work and care for young children.

(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 requiring all staff to have met statutory requirements and receive training.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 1,918 licensed child-care centers in Kentucky affected by this administrative regulation. The Cabinet for Health and Family Services Office of the Inspector General, Division of Regulated Child Care, and Department for Community Based Services, Division of Child Care, are also 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 actions will need to be taken by any entities. Staff members are currently required to complete annual training hours. This amendment creates an established timeframe for training hour completion. Providers will no longer need to track each individual's training hours based on their hire date (i.e. keeping up with individual training hour deadlines for each staff member). The cabinet will be able to

determine compliance with training requirements in a much more efficient manner and create and run simplified reports.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants and licensed child-care centers and the children in their care will benefit from improved clarity, greater program integrity, and enhanced quality assurance in the child care community.

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

(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any new continuing costs for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required as a result of this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
45 C.F.R. 98.2, 98.43, 42 U.S.C. 601-619, 9857-9858r

2. State compliance standards. KRS 194A.050(1), 199.896(2), (6)

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98.2, 42 U.S.C. 601-619, 9857-9858r

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.896(2), (6), 45 C.F.R. 98.2, 42 U.S.C. 601-619, 9857-9858r

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will not generate revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There are no additional costs to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

**922 KAR 2:100. Certification of family child-care homes.**

RELATES TO: KRS Chapter 13B, 158.030, 186.018, 186.020, 189.125, 194A.050(1), 199.011(3), (4), 199.894(1), (5), 199.895, 199.8951, 199.896(18), 199.897, 199.898, 199.8982, 214.010, 214.036, 311.646, 314.011(5), 527.070(1), 600.020, 620.020(8), 620.030, 7 C.F.R. 226.20, 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9831-9852, 9857-9858r[~~9857-9858g~~]

STATUTORY AUTHORITY: KRS 194A.050(1), 199.8982(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.8982(1)(f) requires the cabinet to promulgate administrative regulations to establish standards for the issuance, monitoring, release of information, renewal, denial, revocation, and suspension of a certificate of operation, and to impose minimum staff-to-child ratios for a family child-care home. The statute authorizes the cabinet to establish minimum safety requirements for operation of a certified family child-care home. This administrative regulation establishes minimum requirements intended to protect the health, safety, and welfare of children cared for by certified family child-care home providers.

Section 1. Definitions. (1) "Assistant" means a person:

(a) Who meets the requirements listed in Section 2(6) and Section 10(6), (7), and (8) of this administrative regulation; and

(b) Whose work is either paid or unpaid.

(2) "Cabinet" is defined by the KRS 199.011(3) and 199.894(1).

(3) "Child" is defined by KRS 199.011(4).

(4) "Contract substitute staff member" means a person who temporarily assumes the duties of a regular staff person, meets the requirements established in Section 11 of this administrative regulation, and receives payment from a contract entity rather than the child care center.

(5) "Corporal physical discipline" is defined by KRS 199.896(18).

(6)[~~(5)~~] "Developmentally appropriate" means suitable for the specific age range and abilities of a child.

(7)[~~(6)~~] "Family child-care home" is defined by KRS 199.894(5).

(8)[~~(7)~~] "Health professional" means a person

actively[~~currently~~] licensed as a:

(a) Physician;

(b) Physician assistant;

(c) Advanced practice registered nurse; or

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

(9)[~~(8)~~] "Home" means the private primary residence of the certified family child-care home provider and contiguous property.

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

(11)[~~(10)~~] "Parent" is defined by 45 C.F.R. 98.2.

(12)[~~(11)~~] "Parental or family participation" means a family child-care home's provision of information or inclusion of a child's parent in the child-care home's activities, including[~~such as~~]:

(a) Distribution of a newsletter;

(b) Distribution of a program calendar;

(c) A conference between the provider and the parent; or

(d) Other activity designed to engage a parent in the program's activities.

(13)[~~(12)~~] "Pediatric abusive head trauma" is defined by KRS 620.020(8).

(14)[~~(13)~~] "Premises" means the building and contiguous property in which child care is certified.

(15)[~~(14)~~] "Preschool-age" means a child who is older than a toddler and younger than school-age.

(16)[~~(15)~~] "Provider" means an owner, operator, or person who:

(a) Cares for a child in the provider's own home;

(b) Is not required to be licensed under 922 KAR 2:090; and

(c) Meets the requirements of Section 2 of this administrative regulation.

(17)[~~(16)~~] "Related" means having one (1) of the following relationships with the provider:

(a) Child;

(b) Grandchild;

(c) Niece;

(d) Nephew;

(e) Sibling;

(f) Step-child; or

(g) Child in legal custody of the provider.

(18)[~~(17)~~] "School-age child" means a child who meets the age requirements of KRS 158.030 or who attends kindergarten, elementary, or secondary education.

(19)[~~(18)~~] "Toddler" means a child between the age of twelve (12) months and thirty-six (36) months.

Section 2. Certification Process. (1) The cabinet or its designee shall be responsible for certifying a family child-care home.

(2) An applicant for certification shall:

(a) Show proof by photo identification or birth certificate that the individual is at least eighteen (18) years of age;

(b) Obtain commercial liability insurance of at least $50,000 per occurrence; and

(c) Submit within ninety (90) days of initiation of the application process:

1. A completed OIG-DRCC-03, Initial Certification Application for Family Child-Care Home;

2. A nonrefundable certification fee of ten (10) dollars pursuant to KRS 199.8982(1)(b);

3. Written documentation from the local authority showing the child-care home is in compliance with local zoning requirements;

4. Documentation of the requirements of KRS 199.8982(1)(a)1 through 3 and 5;

5. Background checks completed in accordance with 922 KAR 2:280; and

6. A physician's statement documenting that the family child-care home provider's health is satisfactory for operation of a family child-care home, including that the provider is free of active tuberculosis.

(3) An applicant for certification shall have a:

(a) High school diploma, general equivalency diploma (GED), or documentation from a comparable educational entity; or

(b) Commonwealth Child Care Credential in accordance with 922 KAR 2:250.

(4) An applicant shall be currently certified by an agency approved in accordance with 922 KAR 2:240 in infant and child:

(a) Cardiopulmonary resuscitation (CPR); and

(b) First aid.

(5) An adult living in the home of the applicant, present during the hours of operation, or having unsupervised contact with a child in care, and the applicant's assistant shall:

(a) Complete background checks in accordance with 922 KAR 2:280; and

(b) Submit a copy of negative tuberculin results or a health professional's statement documenting that the adult is free of active tuberculosis.

(6) If an adult other than an adult listed on the initial application begins living in the provider's home, present during the hours of operation or having unsupervised contact with a child in care, the adult shall submit to background and health checks within thirty (30) calendar days of residence within the household.

(7) Upon receipt of a completed application for certification, and a nonrefundable certification fee pursuant to KRS 199.8982(1)(b), cabinet staff shall:

(a) Review and process the application; and

(b) Conduct an unannounced inspection of the home pursuant to KRS 199.8982(1)(b), including review of the evacuation plan in accordance with Section 19(7)[~~18(7)~~] of this administrative regulation.

(8) If the requirements of 922 KAR 2:280, subsections (1) through (7) of this section, and Sections 10 through 20[~~19~~] of this administrative regulation have been met, an applicant shall be certified as described in KRS 199.8982.

(9) Within three (3) months of submission to the cabinet of a complete OIG-DRCC-03, an applicant shall:

(a) Demonstrate completion of six (6) hours of cabinet-approved training in accordance with KRS 199.8982(1)(a)6; and

(b) Develop and implement a written plan for obtaining nine (9) hours of annual cabinet-approved training as required in Section 10(1) of this administrative regulation.

(10)(a) A family child-care home certificate shall:

1. Be displayed in a prominent place, as required by KRS 199.8982(1)(c);

2. Contain the:

a. Name and address of the child care provider;

b. Maximum number of unrelated children who may be served;

c. Identification number; and

d. Effective and expiration dates; and

3. Be valid for only the:

a. Name of the individual authorized on the certificate to operate a family child-care home; and

b. Residential address printed on the certificate.

(b) A certified family child-care home whose certificate is suspended or revoked shall:

1. Receive a new certificate indicating that the provider is under adverse action; and

2. Post the new certificate in accordance with paragraph (a) of this subsection.

(11) A change of location shall require:

(a) A ten (10) calendar day notice;

(b) A completed OIG-DRCC-03;

(c) An inspection of the new home; and

(d) Continued compliance with this administrative regulation.

Section 3. Renewal of Certification. (1) A family child-care certification shall expire two (2) years from the date of issuance unless the certificate holder meets the requirements of subsection (2) of this section. A certificate that expires shall lapse and shall not be subject to appeal.

(2) A family child-care home provider shall submit one (1) month prior to expiration of the provider's certification:

(a) A completed OIG-DRCC-04, Certified Family Child-Care Home Renewal Form;

(b) A nonrefundable renewal fee of ten (10) dollars every two (2) years pursuant to KRS 199.8982(1)(b);

(c) A physician's statement documenting that the family child-care home provider's health is satisfactory for continued operation of a family child-care home; and

(d) Proof that the family child-care home provider continues to

meet the minimum requirements specified in Sections 2, 3, and 10 through 20[~~19~~] of this administrative regulation.

(3) The cabinet shall:

(a) Review and process the OIG-DRCC-04 submitted in accordance with subsection (2) of this section;

(b) Conduct an unannounced inspection of the home pursuant to KRS 199.8982(1)(b); and

(c) Approve the family child-care home within fifteen (15) calendar days of receipt of the OIG-DRCC-04 submitted in accordance with subsection (2) of this section if the requirements in Sections 2, 3, and 10 through 20[~~19~~] of this administrative regulation are met.

(4) The cabinet shall conduct an annual unannounced inspection of the home pursuant to KRS 199.8982(1)(b) and 42 U.S.C. 9858c(c)(2)(K).

Section 4. Statement of Deficiency and Corrective Action Plans. (1) If the cabinet finds a provider noncompliant with Sections 2, 3, or 10 through 20[~~19~~] of this administrative regulation, the cabinet or its designee shall complete a written statement of deficiency.

(2) Except for a violation posing an immediate threat, a family child-care home shall submit a written corrective action plan to the cabinet or its designee within ten (10) calendar days from receipt of the statement of deficiency to eliminate or correct the regulatory violation.

(3) A corrective action plan shall include:

(a) Specific action undertaken to correct a violation;

(b) The date action was or shall be completed;

(c) Action utilized to assure ongoing compliance;

(d) Supplemental documentation requested as a part of the plan; and

(e) Signature of the provider and the date of signature.

(4) The cabinet or its designee shall review the plan and notify a family child-care home within thirty (30) calendar days from receipt of a plan, in writing, of the decision to:

(a) Accept the plan;

(b) Not accept the plan; or

(c) Deny, suspend, or revoke the family child-care home's certification in accordance with Section 5, 6, 7, or 8 of this administrative regulation.

(5) A notice of unacceptability shall state the specific reasons a plan was not accepted.

(6) A family child-care home notified of an unaccepted plan shall:

(a) Submit an amended plan within fifteen (15) calendar days of notification; or

(b) Have its certification revoked or denied for failure to:

1. Submit an acceptable amended plan; or

2. Implement corrective measures identified in the corrective action plan.

(7) If a family child-care home fails to submit an acceptable corrective action plan or does not implement corrective measures in accordance with the corrective action plan, the cabinet shall deny or revoke a provider's certification.

(8) The cabinet shall not review or accept more than three (3) corrective action plans from a family child-care home in response to the same written statement of deficiency.

(9) An administrative regulatory violation reported on a statement of deficiency that poses an immediate threat to the health, safety, or welfare of a child shall be corrected by the family child-care home provider within five (5) working days of notification.

(10) The voluntary relinquishment of a family child-care home's certification shall not preclude the cabinet's pursuit of adverse action.

Section 5. Denial of Application for Certification. (1) An application for initial certification as a family child-care home shall be denied if the applicant, an assistant, or an adult residing in the household has a history of behavior that may impact the safety or security of a child in care including:

(a) A disqualifying criterion or background check result in accordance with 922 KAR 2:280; or

(b) Other behavior or condition indicating inability to provide reliable care to a child.

(2) An application for certification as a family child-care home provider shall be denied if the applicant or certificate holder:

(a) Fails to comply with the minimum certification standards specified in Sections 10 through 20[~~19~~] of this administrative regulation and KRS 199.8982;

(b) Knowingly misrepresents or submits false information on the application or other form required by the cabinet or its designee;

(c) Refuses, during the hours of operation, access by:

1. A parent of a child in care, the cabinet, the cabinet's designee, or another agency with regulatory authority to:

a. A child in care; or

b. The provider's premises; or

2. The cabinet, the cabinet's designee, or another agency with regulatory authority to the provider's records;

(d) Is placed on a directed plan of correction more than two (2) times in a three (3) year period; or

(e) Has been discontinued or disqualified from participation in:

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

2. Another governmental assistance program due to fraud, abuse, or criminal conviction related to that program.

(3) Effect of previous denial or revocation.

(a) If an applicant has had a previous child care registration, certification, or license subject to denial, revocation, or voluntary relinquishment pending an investigation or adverse action, the cabinet shall grant the applicant a certificate to operate a family child-care home if:

1. A seven (7) year period has expired from the:

a. Date of the prior notice of denial or revocation; or

b. Date the certification, license, or registration was voluntarily relinquished as a result of an investigation or a pending adverse action; and

2. The applicant has:

a. The proven ability to comply with the provisions of this administrative regulation and KRS 199.8982;

b. Completed, since the time of the prior denial or revocation, sixty (60) hours of cabinet-approved training in developmentally appropriate child care practice; and

c. Not had an application, registration, certificate, or license to operate as a child care provider denied or revoked for:

(i) A disqualifying criterion or background check result in accordance with 922 KAR 2:280; or

(ii) Discontinuation or disqualification from participation in the Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020, or another governmental assistance program due to fraud, abuse, or criminal conviction related to that program.

(b) If a certificate is granted after the seven (7) year period specified in paragraph (a) of this subsection, the provider shall serve a two (2) year probationary period during which the home shall be inspected on at least a quarterly basis.

Section 6. Directed Plan of Correction (DPOC). (1) If the cabinet determines that a certified family child-care home provider is in violation of this administrative regulation or 922 KAR 2:280, based on the severity of the violation, the cabinet:

(a) Shall enter into an agreement with the provider directing the requirements for remedying a violation and achieving compliance;

(b) Shall notify or require the provider to notify a parent of a child who may be affected by the situation for which a DPOC has been imposed;

(c) Shall increase the frequency of monitoring by cabinet staff to verify the implementation of the DPOC;

(d) May require the certified family child-care home to participate in additional training; and

(e) May amend the agreement with the certified family child-care home if the cabinet identifies an additional violation during the DPOC period.

(2) A DPOC shall result in a suspension or revocation of certification or shall be modified to impose additional requirements if a certified family child-care home provider:

(a) Fails to meet a condition of the DPOC; or
(b) Violates a requirement of the DPOC.

Section 7. Suspension. The cabinet shall take emergency action in accordance with KRS 13B.125. (1) An emergency order issued pursuant to this section shall:
(a) Be served to a certified family child-care home provider in accordance with KRS 13B.050(2); and
(b) Specify the regulatory violation that caused the emergency condition.
(2) Upon receipt of an emergency order, a provider shall surrender the certificate of operation to the cabinet.
(3) The cabinet or its designee and the provider shall make reasonable efforts to:
(a) Notify a parent of each child in care of the suspended provider; and
(b) Refer a parent for assistance in locating alternate child care arrangements.
(4) A certified family child-care home required to comply with an emergency order issued in accordance with this section may submit a written request for an emergency hearing within twenty (20) calendar days of receipt of the order to determine the propriety of the certification's suspension.
(5) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing in accordance with KRS 13B.125(3).
(6)(a) Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming or reversing the emergency order to suspend certification.
(b) The emergency order shall be affirmed if there is substantial evidence of an immediate threat to public health, safety, or welfare.
(7) A provider's certification shall be revoked if the condition that resulted in the emergency order is not corrected within thirty (30) calendar days of service of the emergency order.

Section 8. Revocation.(1) A family child-care home provider's certification shall be revoked if a provider:
(a) Knowingly misrepresents or submits false information on the application or other form required by the cabinet or its designee;
(b) Interferes with a cabinet representative's ability to perform an official duty;
(c) Refuses, during the hours of operation, access by:
1. A parent of a child in care, the cabinet, the cabinet's designee, or another agency with regulatory authority to:
a. A child in care; or
b. The provider's premises; or
2. The cabinet, the cabinet's designee, or another agency with regulatory authority to the provider's records;
(d) Is convicted of, or enters an Alford or guilty plea to, a criminal charge that threatens the health, safety, or welfare of a child in care;
(e) Is unable to operate a family child-care home due to a medical condition;
(f) Does not meet the requirements of KRS 199.8982(1) or Sections 2, 3, and Sections 10 through 20[~~19~~] of this administrative regulation;
(g) Is placed on a directed plan of correction more than two (2) times in a three (3) year period; or
(h) Has been discontinued or disqualified from participation in:
1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or
2. Another governmental assistance program due to fraud, abuse, or criminal conviction related to that program.
(2)(a) If the cabinet determines that a condition of subsection (1) of this section exists, the cabinet or its designee shall send a written notice of its intention to revoke the certificate to the family child-care home by personal service delivery or through certified mail.
(b) Subsequent to the notice provided in accordance with paragraph (a) of this subsection, a family child-care home's failure to request an appeal pursuant to Section 9 of this administrative regulation shall result in the final determination revoking the home's certification.
(3) The notice of revocation shall:
(a) Explain the reason for the revocation;
(b) Specify that the child care provider shall cease operation as a certified family child-care home upon revocation;
(c) Advise the family child-care home provider of the right to request an appeal on an OIG-DRCC-05, Certified Family Child-Care Home Request for Appeal, prior to the effective date of the revocation;
(d) Specify that revocation shall be stayed if an appeal is requested; and
(e) Require the family child-care home provider to surrender the certificate of operation to cabinet staff when the revocation becomes effective.
(4) If a provider's certification has been revoked, the cabinet or its designee and the provider shall make reasonable efforts to:
(a) Notify a parent of each child in care; and
(b) Refer the parent for assistance in locating alternate child care arrangements.

Section 9. Appeal of Denials, Suspension, and Revocation. (1) If the cabinet denies certification, suspends certification, or revokes certification, the family child-care home provider may request an appeal by completing an OIG-DRCC-05 within twenty (20) calendar days of receipt of the notice of adverse action.
(2) Upon request of the appeal, the provider shall be afforded a hearing in accordance with KRS Chapter 13B.
(3) If a final order from an administrative hearing does not uphold a suspension, the provider may resume providing child care.

Section 10. Standards for the Provider. (1)(a) Between July 1 and June 30 of the following calendar year, a provider shall complete[~~annually~~] at least nine (9) hours of cabinet-approved early care and education training beginning[~~with~~] the second year of operation, including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training in accordance with KRS 199.8982(2) to be completed:
1. Within the second year of employment or operation in child care; and
2. Every subsequent five (5) years of employment or operation in child care.
(b) A provider or assistant's compliance with the training in accordance with paragraph (a) of this subsection or subsection (8) of this section shall be verified through the cabinet-designed database maintained pursuant to 922 KAR 2:240.
(2) A provider shall not provide care for more unrelated children than the number authorized on the certificate of operation.
(3) A provider shall have an assistant present if the provider cares for more than:
(a) Four (4) infants, including the provider's own or related infants; or
(b) Six (6) children under the age of six (6) years old, including the provider's own or related children.
(4) The maximum number of unrelated children in the care of a certified family child-care home provider shall not exceed six (6) at any one (1) time. A provider may care for four (4) related children in addition to six (6) unrelated children for a maximum child care capacity of ten (10) at any one (1) time.
(5) If a provider operates the in-home child care business for twenty-four (24) consecutive hours, the provider shall:
(a) Receive an eight (8) hour period of respite after working sixteen (16) consecutive hours during a twenty-four (24) hour period; and
(b) Employ an assistant during the period of respite.
(6) Prior to being left alone with a child, an assistant shall be certified by a cabinet-approved agency in infant and child:
(a) CPR; and
(b) First aid.
(7) An assistant shall be:
(a) Eighteen (18) years of age or older;
(b) Under supervision of a provider;
(c) Used for providing care in a certified family child-care

home; and

(d) Used in the absence of the certified provider.

(8) An assistant used in excess of fourteen (14) calendar days during a one (1) year period shall demonstrate completion of at least nine (9) hours of cabinet-approved training between July 1 and June 30 of the following calendar year beginning the second year of employment, including:

(a) Six (6) hours of cabinet-approved training in accordance with KRS 199.8982(2)[~~199.8982(1)(a)6~~]; and

(b) Pediatric abusive head trauma training pursuant to KRS 199.8982(2), in accordance with subsection (1) of this section.

(9) If a provider, an assistant, or a member in a provider's household is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:

(a) For the duration of the investigation; and

(b) Pending completion of an administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

(10) During hours of operation, a provider and another person in the home shall:

(a) Be free of the influence of alcohol or a controlled substance except for use of a controlled substance as prescribed by a physician; and

(b) Prohibit smoking or vaping in the presence of children in care.

(11) During a provider's absence, an assistant shall be physically present with a child in care during hours of operation.

(12) A provider shall:

(a) Not be employed outside of the home during regular hours of operation; and

(b) Maintain daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 14[~~13~~], if a child receives services from the provider through the Child Care Assistance Program.

Section 11. Contract Substitute Staff Requirements. (1) A contract substitute staff member shall:

(a) Comply with the training requirements established in Section 10 of this administration regulation;

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

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

(d) Be entered into the cabinet-designated database as a staff member of the outside organization in accordance with 922 KAR 2:240;

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

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

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

(a) KRS 199.8982(1)(a) 6 and (2), 922 KAR 2:180, 922 KAR 2:240, 922 KAR 2:250, 922 KAR 2:270, or this administrative regulation; or

(b) A child development associate credential.

Section 12. The General Requirements of the Family Child-Care Home Environment. (1) A provider's home and each play area used for child care shall:

(a) Be free from risk of harm in accordance with the requirements of this administrative regulation; and

(b) Have adequate:

1. Heating and cooling;

2. Light; and

3. Ventilation.

(2) Each floor level used for child care shall have at least one (1):

(a) Unblocked exit to the outside;

(b) Smoke detector;

(c) Fire extinguisher; and

(d) Carbon monoxide detector if the home:

1. Uses fuel burning appliances; or

2. Has an attached garage.

(3) The areas of the home that are accessible to children in care shall be free from items harmful to children including the following items:

(a) Cleaning supplies, poisons, paints, and insecticides;

(b) Knives, scissors, and sharp objects;

(c) Power tools, lawn mowers, hand tools, nails, and other equipment;

(d) Matches, cigarettes, lighters, combustibles, and flammable liquids;

(e) Plastic bags; and

(f) Litter and rubbish.

(4) Alcohol shall:

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

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

(5) In accordance with KRS 527.070(1), firearms and ammunition shall be stored away from the presence of children, in separate locked containers, which, in order to be opened, require a:

(a) Key; or

(b) Combination.

(6) Electrical outlets not in use shall be covered.

(7) An electric fan, floor furnace, or freestanding heater or fireplace shall:

(a) Be out of the reach of a child; or

(b) Have a safety guard to protect a child from injury.

(8) A certified family child-care home shall have:

(a) At least one (1) accessible and working telephone on each level used for child care while a child in care is present on that level; and

(b) A list of emergency numbers posted on each level used for child care or maintained in the contacts of each telephone, including numbers for the:

1. Police;

2. Fire station;

3. Emergency medical care and rescue squad; and

4. Poison control center.

(9) Equipment and toys shall be:

(a) Designated by the manufacturer as developmentally appropriate to the age of children in care;

(b) In sufficient quantity for the number of children in care; and

(c) Safe, sound, clean, and in good repair.

(10) Stairs and steps used for children in care shall be:

(a) Solid;

(b) Safe; and

(c) Railed.

(11) If an infant or toddler is in the care of a provider, indoor stairs with more than two (2) steps shall be blocked.

(12) Exclusive of the bathroom and storage area, an indoor area, including furnishings, used for child care shall contain at least thirty-five (35) square feet per child for:

(a) Play; and

(b) Activities that meet the developmental needs of the children in care.

(13) An outdoor play area shall be free of unavoidable danger or risk.

(14) Each child in an outdoor play area shall be under the direct supervision of the provider or assistant.

(15) Outdoor stationary play equipment shall be:

(a) Securely anchored;

(b) Developmentally appropriate; and

(c) Safe.

(16) A trampoline shall not be accessible to a child in the care of a provider.

(17) A swimming pool on the premises shall:
(a) Be maintained and free of debris and body waste;
(b) Have a water filtering system or be emptied daily;
(c) Be supervised when in use; and
(d) Be inaccessible to a child when not in use.
(18) An above-ground pool shall have:
(a) A stationary wall no less than four (4) feet tall; and
(b) Hand holds or foot holds that are inaccessible when the pool is not in use.
(19) A fire drill shall be:
(a) Conducted during hours of operation at least monthly; and
(b) Documented.
(20) An earthquake drill and a tornado drill shall be:
(a) Conducted during hours of operation at least quarterly; and
(b) Documented.
(21) A family child-care home shall:
(a) Be clean;
(b) Be uncluttered;
(c) Be free of insects and rodents;
(d) Have a water supply that is:
1. Potable;
2. Adequate; and
3. From an approved public water supply; and
(e) Have bathrooms, including toilets, sinks, and potty chairs that are:
1. Sanitary; and
2. In good working condition.
(22) Windows, doors, and outer openings shall be screened to prevent the entrance of vermin.
(23) Indoor and outdoor garbage shall be stored in a waterproof container with a tight-fitting cover.
(24) Playpens and play yards shall:
(a) Meet the federal standards as issued by the Consumer Product Safety Commission, including 16 C.F.R. 1221;
(b) Be manufactured for commercial use; and
(c) Not be used for sleeping or napping.

Section 13[~~12~~]. Care Requirements for a Provider. (1) A provider shall ensure the health, safety, and comfort of each child.
(2)(a) Care for a child with a special need shall be consistent with the nature of the need as documented by the child's health professional.
(b) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.
(3) Television or video viewing by a child shall be limited to:
(a) Two (2) hours daily;
(b) The planned program activities; and
(c) Developmentally appropriate child-related content, as designated by standardized content guidelines.
(4) A child shall:
(a) Wash hands with liquid soap and warm running water:
1. Before and after eating or handling food;
2. After toileting or diaper change;
3. After handling animals;
4. After touching an item or an area of the body soiled with body fluids or waste; and
5. After outdoor and indoor play time; or
(b) Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (a) of this subsection. The child shall wash the child's hands as soon as practicable once liquid soap and warm running water are available.
(5) A provider and an assistant shall:
(a) Wash hands with liquid soap and warm running water:
1. Before and after diapering a child;
2. Before and after feeding a child;
3. After toileting or assisting a child with toileting;
4. After handling animals;
5. Before dispensing medication;
6. After caring for a sick child;
7. After wiping or blowing a child's or own nose; and
8. After smoking or vaping; or
(b) Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (a) of this subsection. The provider or assistant shall wash the provider or assistant's hands as soon as practicable once liquid soap and warm running water are available.
(6) A provider shall ensure[~~assure~~] that a child does not share:
(a) Cups;
(b) Eating utensils;
(c) Wash cloths;
(d) Towels; and
(e) Toiletry items.
(7) An infant shall sleep and nap on the infant's back unless the infant's health professional signs a waiver that states the infant requires an alternate sleeping position.
(8) Rest time shall be provided for each child who is not school-age and who is in care for more than four (4) hours.
(9) Rest time shall include adequate space specified by the child's age as follows:
(a) For an infant:
1. An individual non-tiered crib that meets Consumer Product Safety Commission standards established in 16 C.F.R. 1219-1220;
2. A firm crib mattress in good repair with a clean tight-fitted sheet that is changed:
a. Weekly; or
b. Immediately if it is soiled or wet;
3. No loose bedding, such as a bumper or a blanket; and
4. No toys or other items except for the infant's pacifier; or
(b) For a toddler or preschool-age child:
1. An individual bed, a two (2) inch thick waterproof mat, or cot in good repair; and
2. Bedding that is in good repair and is changed:
a. Weekly; or
b. Immediately if it is soiled or wet.
(10) Rest time shall not exceed two (2) hours for a preschool-age child unless the child is attending nontraditional hours or is sick.
(11) A child who does not sleep shall be permitted to play quietly and be visually supervised.
(12) If overnight care is provided, a provider or an assistant shall:
(a) Remain awake until every child in care is asleep; and
(b) Sleep on the same floor level of the home as an infant or toddler.
(13) A certified family child care home shall provide a daily planned program:
(a) That is available to a parent of a child in care or the cabinet upon request;
(b) Of activities that are developmentally appropriate for each child served;
(c) That provides experience to promote the individual child's physical, emotional, social, and intellectual growth and well-being; and
(d) That offers a variety of creative activities, such as:
1. Art or music;
2. Math or numbers;
3. Dramatic play;
4. Stories and books;
5. Science or nature;
6. Block building or stacking;
7. Tactile or sensory activity;
8. Multi-cultural exposure;
9. Indoor or outdoor play in which a child makes use of both small and large muscles;
10. A balance of active and quiet play, including group and individual activity; and
11. An opportunity for a child to:
a. Have some free choice of activities;
b. If desired, play apart from the group at times; and
c. Practice developmentally appropriate self-help procedures in respect to:
(i) Clothing;
(ii) Toileting;
(iii) Hand-washing; and
(iv) Eating.
(14) Except for a school-aged child whose parent has given written permission and whose whereabouts are known, a child

shall not be permitted off the premises of a family child-care home without a caregiver.

(15) Use of corporal physical discipline shall be prohibited pursuant to KRS 199.896(18).

(16) A child shall be released from a family child-care home to:

(a) The child's custodial parent;

(b) The person designated in writing by the parent to receive the child; or

(c) In an emergency, a person designated over the telephone by the parent.

Section 14[~~13~~]. Toilet and Diapering Requirements. (1) A toilet room shall:

(a) Have an adequate supply of toilet paper; and

(b) Be cleaned and disinfected daily.

(2) A sink shall be:

(a) Located near or in close proximity to toilets;

(b) Equipped with hot and cold running water that allows for hand washing;

(c) Equipped with hot water at a minimum temperature of ninety (90) degrees Fahrenheit and a maximum of 120 degrees Fahrenheit;

(d) Equipped with liquid soap and single use, disposable hand drying material;

(e) Equipped with an easily cleanable, covered waste receptacle; and

(f) Near or in close proximity to a changing area used for infants and toddlers.

(3) Each toilet shall:

(a) Be kept in clean condition;

(b) Be kept in good repair;

(c) Be in a lighted room; and

(d) Have ventilation.

(4) Toilet training shall be coordinated with the child's parent.

(5) An adequate quantity of freshly laundered or disposable diapers and clean clothing shall be available.

(6) If a toilet training chair is used, the chair shall be:

(a) Emptied promptly; and

(b) Disinfected after each use.

(7) Diapers or clothing shall be:

(a) Changed when soiled or wet;

(b) Stored in a covered leak proof container temporarily; and

(c) Washed or disposed of at least once a day.

(8) The proper methods of diapering and hand-washing shall be available at each diaper changing area.

(9) If a child is being diapered, the child shall:

(a) Not be left unattended; and

(b) Be placed on a surface that is:

1. Clean;

2. Padded;

3. Free of holes, rips, tears, or other damage;

4. Nonabsorbent;

5. Easily cleaned; and

6. Free of items not used for diaper changing.

(10) Unless another cleaning method is authorized by the child's parent or prescribed by a physician, individual disposable washcloths shall be used to thoroughly clean the affected area of a child.

(11) A provider or an assistant shall disinfect the diapering surface after each child is diapered.

(12) If a provider or an assistant wear disposable gloves, the gloves shall be changed and disposed of after each child is diapered.

Section 15[~~14~~]. Food Requirements. (1) A provider and an assistant shall:

(a) Use sanitary procedures when preparing and serving food;

(b) Refrigerate perishable food and beverages; and

(c) Serve:

1. Breast milk or iron-fortified formula to a child:

a. Age birth to twelve (12) months; or

b. Beyond twelve (12) months of age as documented by the parent or the child's physician;

2. Pasteurized whole milk to a child age twelve (12) months to twenty-four (24) months; or

3. Pasteurized skim or low fat one (1) percent milk to a child age twenty-four (24) months to school-age.

(2) Water shall be:

(a) Available to a child in care; and

(b) Served in addition to meal requirements if a child requests throughout the day.

(3) A certified family child-care home shall offer each child the same food items unless the child's parent or health professional documents a dietary restriction that necessitates an alternative food item for the child.

(4) Second servings shall be available to a child.

(5) Food shall not be:

(a) Used for:

1. Reward; or

2. Discipline; or

(b) Withheld until all other food items are consumed.

(6) Meals shall:

(a) Be served in an amount appropriate to the age of the child;

(b) Include appropriate types of food according to the age of the child;

(c) Not be served during television or video viewing;

(d) Be served every two (2) to three (3) hours; and

(e) Be served to a child:

1. Seated with sufficient room to manage food and tableware; and

2. Supplied with individual eating utensils designed for use by a child.

(7) Breakfast shall include:

(a) Milk;

(b) A whole grain or an enriched grain bread; and

(c) Fruit, vegetable, or 100 percent juice.

(8) A snack shall include two (2) of the following:

(a) Milk;

(b) Protein source;

(c) Fruit, vegetable, or 100 percent juice; or

(d) A whole grain or an enriched grain bread.

(9) Lunch and dinner shall include:

(a) Milk;

(b) Protein source;

(c)1. Two (2) vegetables;

2. Two (2) fruits; or

3. One (1) fruit and one (1) vegetable; and

(d) A whole grain or an enriched grain bread.

(10) A weekly menu shall be:

(a) Prepared;

(b) Dated;

(c) Available to a parent of a child in care or the cabinet upon request; and

(d) Kept on file for thirty (30) calendar days.

(11) Substitutions to a weekly menu shall be noted on the day the meal is served.

(12) Unless provided as part of the fee for child care or the provider is a participant in the food program, an infant's formula shall be prepared, labeled, and provided by the parent.

(13) Each child's bottle shall be:

(a) Labeled;

(b) Covered; and

(c) Refrigerated.

(14) The refrigerator shall:

(a) Be in working order; and

(b) Maintain a product temperature at or below forty-five (45) degrees Fahrenheit.

(15) Except if thawed for preparation or use, frozen food shall be kept at a temperature of zero degrees Fahrenheit as verified by a thermometer in the freezer.

(16) While bottle-feeding an infant, the:

(a) Child shall be held; and

(b) Bottle shall not be:

1. Propped;

2. Left in the mouth of a sleeping infant; or

3. Heated in a microwave.

(17) A certified family child-care home shall meet requirements of subsections (1)(c) and (7) through (9) of this section if the

provider participates in the Child and Adult Food Care Program and meets meal requirements specified in 7 C.F.R. 226.20.

Section 16[~~15~~]. Medication and First Aid. (1) Medication, including medicine that requires refrigeration, shall be stored in a locked container or area with a lock unless the medication is:

(a) A first aid supply. A first aid supply shall be maintained in accordance with subsection (4) of this section;

(b) Diaper cream, sunscreen, or toothpaste. Diaper cream, sunscreen, or toothpaste shall be inaccessible to a child in care;

(c) An epinephrine auto-injector. A family child-care home shall comply with KRS 199.8951, including:

1. An epinephrine auto-injector shall be inaccessible to a child in care;

2. A certified family child-care home provider shall have training on the administration of an epinephrine auto-injector if the provider maintains an epinephrine auto-injector for a child;

3. A certified family child-care home shall seek emergency medical care for a child if an auto-injector is administered to a child; and

4. A certified family child-care home shall report to the child's parent and the cabinet in accordance with subsection (6) of this section and Section 20(10) [~~19(10)~~] of this administrative regulation if an epinephrine auto-injector is administered to a child; or

(d) An emergency or rescue medication for a child in care, such as medication to respond to diabetic or asthmatic condition, as prescribed by the child's physician. Emergency or rescue medication shall be inaccessible to a child in care.

(2) Prescription and nonprescription medication shall be administered to a child in care:

(a) With a written request of the child's parent or the child's prescribing health professional; or

(b) In accordance with KRS 311.646.

(3) Prescription and nonprescription medications shall be:

(a) Labeled; and

(b) Administered according to directions or instructions on the label.

(4) A provider shall:

(a) Maintain first aid supplies that are easily accessible for use in an emergency, and these supplies shall be inaccessible to the children in care; and

(b) Wash superficial wounds with soap and water before bandaging.

(5) First aid supplies shall include a fully-equipped first aid kit containing the following non-expired items:

(a) Adhesive bandages;

(b) Sterile gauze;

(c) Medical tape;

(d) Scissors;

(e) Thermometer;

(f) Disposable gloves; and

(g) CPR mouthpiece.

(6) A provider shall provide immediate notification of a medical emergency to a child's:

(a) Parent; or

(b) Emergency contact, if the parent is unavailable.

(7) A quiet, separate area that is easily supervised shall be provided for a child too sick to remain with other children.

(8) A provider and an assistant shall:

(a) Be able to recognize symptoms of childhood illnesses;

(b) Be able to provide basic first aid; and

(c) Maintain a child care program that assures affirmative steps are taken to protect children from abuse or neglect pursuant to KRS 600.020(1).

Section 17[~~16~~]. Animals. (1) An animal shall not be allowed in the presence of a child in care:

(a) Unless:

1. The animal is under the supervision and control of an adult;

2. Written parental consent has been obtained; and

3. The animal is certified as vaccinated against rabies; or

(b) Except in accordance with subsection (3) of this section.

(2) A parent shall be notified in writing if a child has been bitten or scratched by an animal.

(3) An animal that is considered undomesticated, wild, or exotic shall not be allowed at a certified family child-care home unless the animal is:

(a) A part of a planned program activity led by an animal specialist affiliated with a zoo or nature conservatory; and

(b) In accordance with 301 KAR 2:081 and 301 KAR 2:082.

Section 18[~~17~~]. Transportation. (1) If transportation is provided or arranged by the certified family child-care home provider, the provider shall:

(a) Have written permission from a parent to transport his or her child;

(b) Have a car or van equipped with seat belts;

(c) Require that a child:

1. Be restrained in an appropriate safety seat meeting state and federal motor vehicle safety standards in accordance with KRS 189.125 and 49 C.F.R. 571.213;

2. Remain seated while the vehicle is in motion; and

3. If under thirteen (13) years of age, be transported in the back seat;

(d) Have emergency and identification information about each child in the vehicle if children are being transported; and

(e) Conform to state laws pertaining to vehicles, driver's license, and insurance pursuant to KRS 186.020.

(2) A child shall not be left unattended:

(a) At the site of aftercare delivery; or

(b) In a vehicle.

(3) A child shall not be left in a vehicle while it is being repaired.

(4) The back of a pickup truck shall not be used to transport a child.

(5) Firearms, ammunition, alcohol, or illegal substances shall not be transported in a vehicle transporting children.

(6) A vehicle shall not transport children and hazardous materials at the same time.

(7) A vehicle transporting a child shall have the headlamps on.

(8) If the driver is not in the driver's seat, the:

(a) Engine shall be turned off;

(b) Keys shall be removed; and

(c) Emergency brake shall be set.

(9) A driver of a vehicle transporting a child for a certified provider shall:

(a) Be at least twenty-one (21) years old;

(b) Complete:

1. The background checks described in Section 2(2)(c)5 or 2(5) of this administrative regulation; and

2. An annual check of the:

a. Kentucky driver history records in accordance with KRS 186.018; or

b. Driver history records through the state transportation agency that issued the driver's license;

(c) Hold a current driver's license that has not been suspended or revoked during the last five (5) years; and

(d) Not caused an accident which resulted in the death of a person.

(10) Based on the harm, threat, or danger to a child's health, safety, and welfare, the cabinet shall pursue an adverse action in accordance with Section 5, 6, 7, or 8 of this administrative regulation:

(a) For a violation of this section; or

(b) If the provider:

1. Fails to report an accident in accordance with Section 20(10)(a)[~~19(10)(a)~~] of this administrative regulation; or

2. Transports more passengers than the vehicle's seating capacity and safety restraints can accommodate.

Section 19[~~18~~]. Records. (1) A provider shall maintain:

(a) A current immunization certificate for each child in care within thirty (30) days of the child's enrollment, unless an attending physician or the child's parent objects to the immunization of the child pursuant to KRS 214.036;

(b) A written record for each child:

1. Completed and signed by the child's parent;

2. Retained on file on the first day the child attends the family

child-care home; and

3. To contain:

a. Identifying information about the child, which includes, at a minimum, the child's name, address, and date of birth;

b. Contact information to enable the provider to contact the child's:

(i) Parent at the parent's home or place of employment;

(ii) Family physician; and

(iii) Preferred hospital;

c. The name of each person who is designated in writing to pick-up the child;

d. The child's general health status and medical history including, if applicable:

(i) Allergies;

(ii) Restriction on the child's participation in activities with specific instructions from the child's parent or health professional; and

(iii) Permission from the parent for third-party professional services in the family child-care home;

e. The name and phone number of each person to be contacted in an emergency situation involving or impacting the child;

f. Authorization by the parent for the provider to seek emergency medical care for the child in the parent's absence; and

g. A permission form for each trip away from the family child-care home signed by the child's parent in accordance with Section 18(1)[~~17(1)~~] of this administrative regulation; and

(c) Daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 14[~~13~~], if a child receives services from the provider through the Child Care Assistance Program.

(2) A certified family child-care home provider shall maintain the confidentiality of a child's records.

(3) The cabinet shall provide, upon request, public information pursuant to KRS 199.8982(1)(d) and (e).

(4) A certified family child-care home provider shall:

(a) Report an incident of suspected child abuse or neglect pursuant to KRS 620.030[~~620.030(1)~~]; and

(b) Provide the cabinet access and information in the completion of the investigation pursuant to KRS 620.030[~~620.030(4)~~].

(5) A certified family child-care home provider shall maintain a written record of:

(a) Quarterly practiced earthquake drills and tornado dills detailing the date, time, and participants in accordance with Section 12(20)[~~11(20)~~] of this administrative regulation;

(b) Monthly practiced fire drills detailing the date, time, and participants in accordance with Section 12(19)[~~11(19)~~] of this administrative regulation; and

(c) Reports to the cabinet that are required in accordance with Section 20(10)[~~19(10)~~] of this administrative regulation.

(6) A certified family child-care home provider shall keep all records for five (5) years.

(7)(a) A certified family child-care home provider shall have a written evacuation plan in the event of fire, natural disaster, or other threatening situation that may pose a health or safety hazard to a child in care in accordance with KRS 199.895.

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

1. Fulfills requirements of KRS 199.895;

2. Is optional for an applicant or a family child-care home's use; and

3. Is available to an applicant or a family child-care home without charge.

Section 20[~~19~~]. Certified Family Child-Care Home Program. The certified family child-care home provider shall:

(1) Develop written information that specifies the:

(a) Rate for child care;

(b) Expected frequency of payment for the program;

(c) Hours of operation; and

(d) Policy regarding:

1. Late fees;

2. Holidays;

3. Vacation;

4. Illness; and

5. Emergency pick up;

(2) Make available a copy of the certification standards to each parent;

(3) Provide each parent with the name, address, and telephone number of the cabinet for the purpose of registering a complaint if the parent believes the family child-care home provider is not meeting the standards;

(4) Post and provide to each parent a copy of children and parent rights, as required by KRS 199.898;

(5) Allow a parent, the cabinet, the cabinet's designee, or another agency with regulatory authority access to the family child-care home at any time a child is in care;

(6) Communicate with each child's parent about the child's:

(a) Development;

(b) Activities;

(c) Likes; and

(d) Dislikes;

(7) Make available to a parent upon request:

(a) The staff to child ratios described in Section 10 of this administrative regulation;

(b) The planned program of activities;

(c) Each statement of deficiency issued by the cabinet during the current certification period;

(d) Each plan of correction submitted by the certified family child-care home to the cabinet during the current certification period; and

(e) Daily schedule including any trips outside the family child-care home;

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

(9) Maintain a written child care agreement with each child's parent, including the name of each person designated by the parent to pick up the child; and

(10) Report:

(a) The following to the cabinet within twenty-four (24) hours from the time of discovery:

1. A communicable disease, which shall also be reported to the local health department pursuant to KRS 214.010;

2. An accident or injury to a child that requires medical care;

3. An incident that results in legal action by or against the family child-care home that:

a. Affects:

(i) A child in care;

(ii) The provider;

(iii) An assistant; or

(iv) A member of the provider's household; or

b. Includes the provider's discontinuation or disqualification from a governmental assistance program due to fraud, abuse, or criminal conviction related to that program;

4. An incident involving fire or other emergency, including a vehicular accident when the provider is transporting a child receiving child care services; or

5. A report of child abuse or neglect that:

a. Has been accepted by the cabinet in accordance with 922 KAR 1:330; and

b. Names the alleged perpetrator as the:

(i) Provider;

(ii) Provider's assistant; or

(iii) Member of the provider's household;

(b) The death of a child to the cabinet within one (1) hour;

(c) Temporary or permanent closure as soon as practicable to the cabinet and the parent of a child in the family child-care home; or

(d) A child care staff member meeting a disqualifying criterion or background check result in accordance with 922 KAR 2:280.

Section 21[~~20~~]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "OIG-DRCC-03, Initial Certification Application for Family Child-Care Home", 8/2018;

(b) "OIG-DRCC-04, Certified Family Child-Care Home

Renewal Form", 8/2018; and

(c) "OIG-DRCC-05, Certified Family Child-Care Home Request for Appeal", 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community-Based Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ERIC T. CLARK, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 29, 2019

FILED WITH LRC: October 30, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 27, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2020. 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: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746, fax 502-564-7091, CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contacts: Laura Begin, Phone Number: (502) 564-3703, Email: Laura.Begin@ky.gov; and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for a certified family child-care home.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish minimum standards for certified family child-care homes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of standards for certification as a family child-care home.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for a certified family child-care home.

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

(a) How the amendment will change this existing administrative regulation: This amendment includes a definition for contract substitute staff; establishes a section outlining contract substitute staff requirements; and makes the annual documentation and tracking of training hours more useful and meaningful to child care providers, and cabinet staff by establishing a set timeframe for the completion of ongoing training.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation addresses the need to formally establish standards for contract substitute staff in child care settings to ensure minimum health and safety standards are met. This amendment also creates a yearly training cycle with an established start and end date, not tied to the staff member's hire date to ensure all child care staff members receive the required training each year.

(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 statutes by aligning policy and providing that all providers have the same training and skills to work and care for young children.

(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 requiring all staff to have met statutory requirements and receive training.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 239 certified family child-care homes in Kentucky affected by this administrative regulation. The Cabinet for Health and Family Services Office of the Inspector General, Division of Regulated Child Care, and Department for Community Based Services, Division of Child Care, are also 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 actions will need to be taken by any entities. Staff members are currently required to complete annual training hours. This amendment creates an established timeframe for training hour completion. Providers will no longer need to track each individual's training hours based on their hire date (i.e. keeping up with individual training hour deadlines for each staff member). The cabinet will be able to determine compliance with training requirements in a much more efficient manner and create and run simplified reports.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Certified family child-care homes and children in their care will benefit from the clarity and specificity provided in this administrative regulation and new permissions afforded in hiring substitute contract staff.

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

(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any new continuing costs for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation; The Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required as a result of this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9857-9858r

2. State compliance standards. KRS 194A.050(1), 199.8982(1)(f)

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.8982(1)(f), 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9857-9858r

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will not generate revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this administrative regulation will not generate revenue in the subsequent years.

(c) How much will it cost to administer this program for the first year? There are no additional costs to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## NEW ADMINISTRATIVE REGULATIONS

**FINANCE AND ADMINISTRATION CABINET**
**Department of Revenue**
**(Repealer)**

**103 KAR 43:101. Repeal of 103 KAR 43:100. Farm tractor defined.**

RELATES TO: KRS 138.344
STATUTORY AUTHORITY: KRS 131.130(1)
NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws of this state. 103 KAR 43:100 defines "tractor" as referred to in KRS 138.344. This administrative regulation has not been substantively updated since 1989 and is no longer relevant for the refunding of tax paid on gasoline or special fuel for agricultural purposes, and will not be updated in the future.

Section 1. 103 KAR 43:100, Farm tractor defined, is hereby repealed.

DANIEL P. BORK, Commissioner
APPROVED BY AGENCY: November 5, 2019
FILED WITH LRC: November 6, 2019 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2020 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, 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 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 January 31, 2020. 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger
(1) Provide a brief summary of:
(a) What this administrative regulation does: 103 KAR 43:101 repeals 103 KAR 43:100 because it has not been substantively updated since 1989 and no longer necessary, as KRS 138.344 contains sufficient guidance to administer special fuel used for agricultural purposes.
(b) The necessity of this administrative regulation: KRS 13A requires a regulation that is no longer needed or to be updated by the promulgating agency going forward to be repealed.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation filing is required per the provisions of KRS 13A to repeal regulations that will no longer be in effect.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will insure that the Department of Revenue is in compliance with KRS 13A.
(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 statues: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: None.
(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, as the authorizing statutes are still in place.
(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 expected with this repeal.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.
(5) Provide an estimate of how much it will cost 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: Current budgetary funding and personnel within the Department of Revenue will absorb the cost of implementing the repeal of this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase in fees or funding is needed.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this regulation.
(9) TIERING: Is tiering applied? Tiering was not applied for this regulation as it is a repeal of an administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, primarily the Department of Revenue, will be impacted.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A and KRS 131.130(1).
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for government agencies as a result of this repeal, as the authorizing statute(s) are still in effect and provide sufficient guidance to administer the special fuel tax for agricultural purposes.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.
(c) How much will it cost to administer this program for the first year? None
(d) How much will it cost to administer this program for subsequent years? None
Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET**
**Kentucky Retirement Systems**
**(New Administrative Regulation)**

**105 KAR 1:149. Quasi-governmental employer cessation window.**

RELATES TO: KRS 61.510 to 61.705, 18A.225, 18A.205, 26 U.S.C. 401, 402, 403

STATUTORY AUTHORITY: KRS 61.522(9), 61.645(9)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) requires the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 61.510 to 61.705. KRS 61.522(6) permits certain quasi-governmental employers in the Kentucky Employees Retirement System to cease participation of its nonhazardous employees under the provisions and requirements of KRS 61.522(8). The ceased quasi-governmental employer shall pay the full actuarial cost of benefits accrued by its current and former nonhazardous employees through June 30, 2020, except as provided by KRS 61.522(8)(g)4. KRS 61.522(9) requires the board to promulgate administrative regulations to administer the provisions of the statute. This administrative regulation establishes the temporary procedures and requirements for quasi-governmental employer cessation from participation in the Kentucky Employees Retirement System pursuant to KRS 61.522.

Section 1. Definitions. (1) "Alternative retirement program" means a plan provided by a ceased quasi-governmental employer, which meets the qualification requirements of 26 U.S.C. 401(a) or 26 U.S.C. 403(b), is eligible to receive direct trustee-to-trustee transfers of pre-tax and post-tax contributions, and shall not include a defined benefit plan.

(2) "Ceased employer" means a quasi-governmental employer who, on or after April 1, 2020, but prior to May 1, 2020, submits a resolution to cease participation in Kentucky Employees Retirement System ("KERS"), which is accepted by the board on or before June 30, 2020.

(3) "Employer", for the purposes of this administrative regulation, means a quasi-governmental employer including local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, the Kentucky Higher Education Student Loan Corporation, and any other agency otherwise eligible to voluntarily cease participating in KERS pursuant to KRS 61.522.

(4) "Employer election" means an election by ceasing employers set forth in the resolution to cease participation in KERS regarding whether nonhazardous employees hired prior to June 30, 2020, who began participating in KERS prior to January 1, 2014, will continue to participate in KERS after June 30, 2020. Nonhazardous employees of employers who do not elect for their employees to continue participating in KERS will not accrue additional service credit or benefits with KERS through the ceased employer after June 30, 2020.

(5) "Nonhazardous employee" means a regular full-time employee participating in KERS in a position other than a position classified as hazardous by the board pursuant to KRS 61.592.

Section 2. (1) An employer may request an estimate of the actuarial cost of ceasing participation in KERS of its nonhazardous employees prior to December 31, 2019. The request shall be made by completing the Form 7726, "Request for Estimated Cost of Voluntary Cessation from KERS under KRS 61.522(8)."

(2) Kentucky Retirement Systems (hereafter "Systems") shall provide the estimate of the cost within sixty (60) days of receipt of the Form 7726, however, no estimate shall be required to be provided prior to January 31, 2020.

(3) Systems shall provide the estimate of the cost based on the information currently in its database and projecting the service and creditable compensation of all nonhazardous employees as if they remain employed in a regular full-time position through June 30, 2020.

(4) The estimated actuarial cost of ceasing participation shall not be binding on the Systems.

(5) The employer shall not rely on the estimated actuarial cost of ceasing participation.

(6) Systems shall notify the employer of the administrative cost to process the Form 7726. The administrative cost shall be calculated as follows:

(a) If the number of employees and former employees to be submitted to the actuary for purposes of determining the estimated actuarial cost of cessation equals one (1) to 100 employees, the administrative cost shall be $1,500.

(b) If the number of employees and former employees to be submitted to the actuary for purposes of determining the estimated actuarial cost of cessation equals 101 or more employees, the administrative cost shall be $4,000.

(7) Systems shall process the Form 7726 after the employer has remitted its payment for the administrative cost.

Section 3. (1) The governing body of an employer seeking to cease participation in KERS through KRS 61.522(8) shall pass a resolution to cease participation and submit the resolution to the board on or after April 1, 2020, but prior to May 1, 2020.

(2) The resolution shall contain the following statements:

(a) That the employer has decided to voluntarily cease participation in KERS;

(b) The employer election and acknowledgement as to whether nonhazardous employees hired prior to June 30, 2020, who began participating in the Systems prior to January 1, 2014, will, as a result of the employer election, either continue to participate or cease earning service credit and benefits after June 30, 2020;

(c) That the employer acknowledges it is unable to rescind the resolution to cease participation after April 30, 2020;

(d) That the employer acknowledges it is subject to the requirements and restrictions of KRS 61.522 and this administrative regulation;

(e) That the employer acknowledges that in order to cease participation in KERS pursuant to KRS 61.522(8), the employer shall pay the actuarial cost of ceasing participation and all administrative costs associated therewith;

(f) That the employer agrees to cooperate with the Systems to educate its employees about the effect of cessation and the employer election on the employees' retirement accounts and the employees' options regarding their retirement accounts;

(g) That the employer shall not mandate, force, or require its employees to take a refund of their accumulated account balance as defined by KRS 61.510(41), or retaliate against its employees who chose not to take refunds of their accumulated account balance as defined in KRS 61.510(41); and

(h) That the employer shall hold the Commonwealth and the Systems, including board members and employees of the Systems, harmless from damages, attorney's fees and costs from legal claims for any cause of action brought by any member or retired member of the ceasing employer related to the cessation of the employer.

(3) The board shall accept the resolution on or before June 30, 2020, in order for the employer to cease participation.

(4) In the event that a resolution to cease participation in the KERS is not received by the board prior to May 1, 2020, the employer shall continue to participate in the KERS and pay the full actuarially determined contributions for fiscal years occurring on or after July 1, 2020.

Section 4. (1) An employer shall file a completed Form 7727, "Actuarial Study for Quasi-Governmental Employer Cessation" with its resolution on or after April 1, 2020, but prior to May 1, 2020, with the executive director of the Systems.

(2) The employer shall submit the following documents with its Form 7727:

(a) Documentation of the alternative retirement program created by or being created by the employer for its employees, such as the determination letter issued by the Internal Revenue Service or a written description of the alternative retirement program;

(b) The employer's most recent five (5) audited financial statements and independent auditor's reports; and

(c) The employer's most recent five (5) Comprehensive Annual Financial Reports, if applicable.

(3) The employer shall submit with its Form 7727, an encrypted electronic file in a format prescribed by the Systems listing each current and former nonhazardous employee, employed in a full-time position as defined by KRS 61.510(21), who was employed during any period the employer participated in KERS, containing:

(a) Full name;

(b) Last known address;

(c) Date of birth;

(d) Social security number or Systems member identification number;

(e) Beginning date of employment;

(f) Date employment ended, if applicable;

(g) Sick leave balance;

(h) Beginning and ending dates of any active duty military service when the employee was not employed by the employer filing the Form 7727, if available; and

(i) Beginning and ending dates of any active duty military service when the employee was employed by the employer filing the Form 7727.

Section 5. (1) The employer shall pay the administrative costs incurred by the Systems for the actuarial study completed in accordance with the Form 7727 to determine the final cost, as well as all other administrative costs incurred for ceasing participation pursuant to KRS 61.522(3)(a).

(2) The employer shall pay $10,000 as a deposit with the Form 7727.

(3) Systems shall place the deposit in a designated account and shall utilize the funds to pay the administrative costs of processing the employer's Form 7727.

(4) Systems shall charge a reasonable fee for its administrative costs associated with processing of the employer's Form 7727 and send an invoice to the employer upon completion of the actuarial study.

(a) Systems shall apply the deposit received pursuant to subsection (2) of this section to any administrative costs incurred by the Systems attributable to the employer's cessation in accordance with KRS 61.522(8).

(b) Following the application of the deposit to the outstanding administrative costs, Systems shall submit an invoice to the employer for the additional administrative costs and the employer shall pay the invoice for the remaining administrative costs within thirty (30) days of the date of the invoice.

(5) If the total administrative cost is less than the deposit paid by the employer, Systems shall credit the remaining balance of the deposit to the employer.

Section 6. (1) Systems shall make reasonable efforts to notify each nonhazardous employee identified on the list provided by the ceased employer that the employer is ceasing participation pursuant to KRS 61.522(8).

(2) For those eligible nonhazardous employees, the Systems shall provide notice informing the employee of the right to request an irrevocable refund, pursuant to KRS 61.522(3)(a)5., of their accumulated account balance as defined in KRS 61.510(41) by submitting a completed Form 1500, "KRS 61.522 60-Day Transfer Request" within sixty (60) days of June 30, 2020 to Kentucky Retirement Systems. The notice shall be sent no later than June 19, 2020.

(a) Systems shall send the notice to the active nonhazardous employees listed by the employer who has filed a Form 7727 on its most recent report required by KRS 61.675 submitted prior to the date the notices are mailed.

(b) The employer shall submit the name and contact information of each nonhazardous employee it hired between the completion of the Form 7727 and before June 30, 2020, within five (5) days of the date the employee begins working for the employer.

(c) A Form 1500 submitted on or before June 30, 2020, shall be void.

(d) A Form 1500 submitted after August 31, 2020, shall be void.

(e) The employee shall be employed by the employer who has filed a Form 7727 on June 30, 2020, to be eligible to request a refund of his accumulated account balance pursuant to KRS 61.522(3)(a)5.

(f) An employee who submitted Form 1500 to the Systems may rescind the form by submitting written notice to the Systems on or before August 31, 2020.

(g) If an employee requests a refund pursuant to KRS 61.522(3)(a)5., the employee's accumulated account balance shall be transferred to the employer's alternative retirement program pursuant to this section even if the employee terminates employment with the employer after June 30, 2020, unless the employee rescinds the Form 1500 on or before August 31, 2020.

(3)(a) The employer shall establish an alternative retirement program on or before August 31, 2020, as provided in KRS 61.522(3)(a)5.

(b) The employer shall submit the final plan documents for its alternative retirement program as well as an affirmative statement that the alternative retirement program does not include a defined benefit plan.

(c) The employer shall submit verification that it has established an alternative retirement program qualified under 26 U.S.C. 401(a) or 26 U.S.C. 403(b) that is eligible to receive direct trustee-to-trustee transfers of pre-tax and post-tax contributions and does not include a defined benefit plan. Systems shall accept one (1) of the following as verification that the employer has established a valid alternative retirement program:

1. A determination letter from the Internal Revenue Service providing that the alternative retirement program established by the employer is a qualified plan pursuant to 26 U.S.C. 401(a) or 26 U.S.C. 403(b) capable of accepting trustee-to-trustee transfers;

2. A letter from the employer's legal counsel certifying that the alternative retirement program satisfies the requirements of 26 U.S.C. 401(a) or 26 U.S.C. 403(b) capable of accepting trustee-to-trustee transfers; or

3. Other reliable verification as determined by the Systems.

(d) Refunds requested pursuant to KRS 61.522(3)(a)5. shall be transferred to the alternative retirement program established by the ceased employer by trustee-to-trustee transfer after August 31, 2020.

1. The alternative retirement program shall accept and separately account for post-tax employee contributions.

2. The ceased employer's legal counsel shall provide written certification that its alternative retirement program shall accept and separately account for post-tax employee contributions.

(e) If the ceased employer fails to establish an alternative retirement program pursuant to paragraph (a) of this subsection, the refund requests pursuant to KRS 61.522(3)(a)5. shall be void. The employees who filed the refund requests pursuant to KRS 61.522(3)(a)5. shall remain members of the system and shall be included in the full actuarial cost.

(4) Former employees of the ceased employer who are currently participating in the State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System, due to employment with a participating agency, shall not be eligible to take a refund of their accumulated account balance until terminating employment with the current participating employer.

(5) Current employees of the ceased employer who are also employed by another employer participating in the State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System shall not be eligible to take a refund of their accumulated account balance until terminating employment with the participating employer.

(6) Current employees of the ceased employer on June 30, 2020, may request a refund pursuant to KRS 61.522(3)(a)5.

(7)(a) Former employees of the ceased employer who are not participating in State Police Retirement System, County

Employees Retirement System, or Kentucky Employees Retirement System shall not be eligible to take a refund of their accumulated account balance pursuant to KRS 61.522(3)(a)5.

(b) The account balance of former employees of the ceased employer who are not participating in State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System but who were employed with the ceased employer on June 30, 2020, and who submitted a valid Form 1500 pursuant to this section, shall be transferred to the employer's alternative retirement program unless the employee rescinds the Form 1500 on or before August 31, 2020.

(8) The four (4) percent employer pay credit and applicable interest accrued shall vest as of June 30, 2020, for those nonhazardous employees who began participating on or after January 1, 2014, and who request a refund pursuant to KRS 61.522(3)(a)5.

Section 7. (1)(a) The employer shall continue to file reports and remit employer contributions on all employees in accordance with KRS 61.675 and 105 KAR 1:140 for creditable compensation paid through June 30, 2020.

(b) If the employer elects for nonhazardous employees to continue participation through the employer election, the employer shall continue to file reports in accordance with KRS 61.675 and 105 KAR 1:140. In addition, the employer shall continue to report all applicable pick up installments for pre-tax service purchases pursuant to KRS 61.552(14)(c). However, pursuant to KRS 61.522(8)(d)2., the employer shall not remit employer contributions for nonhazardous employees after June 30, 2020, as those amounts are factored into the cost calculation established by KRS 61.522(7).

(c) The employer shall continue to remit employer contributions for all hazardous employees.

(2)(a) If a member who is an employee of a ceased employer files for disability retirement benefits but does not establish a last day of paid employment prior to June 30, 2020, and does not continue participation, the Systems shall use June 30, 2020, as the member's last day of paid employment.

(b) If a member who is an employee of a ceased employer continues participation because of the employer election and files for disability retirement benefits, the member's last day of paid employment shall be established pursuant to KRS 61.510(32).

(3)(a) The ceased employer shall continue to pick-up payments for installment purchase of service for any employee who is purchasing service pursuant to KRS 61.552(14) and 105 KAR 1:150 through June 30, 2020.

(b) An employee that ceases participation in KERS on June 30, 2020, shall have sixty (60) days from the date of cessation to pay in full any outstanding balance on the installment purchase agreement pursuant to KRS 61.552(14) and 105 KAR 1:150.

Section 8. (1) Employees of a ceased employer shall comply with the provisions of KRS 61.590, 61.625 and 61.637.

(2) Employees of a ceased employer shall terminate employment with all participating employers of the State Police Retirement System, County Employees Retirement System, Kentucky Employees Retirement System and the ceased employer prior to retiring pursuant to KRS 61.590 or taking a refund pursuant to KRS 61.625.

(3)(a) Employees of a ceased employer shall comply with KRS 61.637 and 105 KAR 1:390 after retirement.

(b) The ceased employer shall certify that the employee seeking to retire or take a refund is terminating employment or has terminated employment with no prearranged agreement to return to work for the ceased employer.

Section 9. (1) Employees shall receive service credit for sick leave accrued pursuant to KRS 61.546 as of June 30, 2020.

(a) If the ceased employer participates in a sick leave program established in KRS 61.546 the employer shall report to the Systems the number of hours of each employee's accumulated sick leave as of June 30, 2020.

(b) Systems shall credit the months of sick leave service reported pursuant to this section to the employee's total service credit to determine the ceased employer's actuarial cost.

(c) If the ceased employer elects that nonhazardous employees hired prior to June 30, 2020, who began participating in the Systems prior to January 1, 2014, will continue participation pursuant to KRS 61.522(8)(d), then those employees shall continue to receive service credit for sick leave accrued pursuant to KRS 61.546 after June 30, 2020, while participating through the ceased employer.

(2)(a) Systems shall credit the months of military service pursuant to KRS 61.555 prior to June 30, 2020, and include the months in the calculation of the ceased employer's actuarial cost.

(b) If the ceased employer elects that nonhazardous employees hired prior to June 30, 2020, who began participating in the Systems prior to January 1, 2014, will continue participation pursuant to KRS 61.522(8)(d), then those employees shall continue to be able to obtain military service pursuant to KRS 61.555 if otherwise eligible.

Section 10. (1) The ceased employer shall pay or otherwise resolve all its invoices and correct all reporting in accordance with KRS 61.675 and 105 KAR 1:140 by July 25, 2020.

(2)(a) Systems shall provide the ceased employer with the amount of the full actuarial cost by sending a notice of actuarial cost and the report of the actuary to the employer.

(b) Systems shall provide the ceased employer with the payment amounts required if the ceased employer elects to pay the actuarial cost in installment payments.

(3)(a) The ceased employer shall elect on the Form 7728, "Payment Election for Quasi-Governmental Employer Cessation" whether to pay the actuarial cost of cessation by lump-sum payment or in installment payments not to exceed thirty (30) years from June 30, 2020.

(b) The Form 7728 shall be received in the retirement office on or before thirty (30) days after the date on which the Systems mailed the notice of actuarial cost and the report of the actuary to the ceased employer.

(c) A ceased employer intending to pay the full actuarial cost by lump-sum shall submit with the Form 7728 documentation of the source of the funds the employer intends to use to pay the full actuarial cost.

(d) A ceased employer intending to pay the actuarial cost by installment payment plan shall submit with the Form 7728 documentation of:

1. Source of funds to pay the installment payments;

2. List of real property owned by the ceased employer, including deeds of conveyance, title, all liens or encumbrances on the real property, and any current written contractual lease or rental agreement of the real property identified;

3. List of liabilities of the ceased employer; and

4. Inventory of all personal property owned by the ceased employer or in which the employer has an interest that may be used as collateral by the employer, including chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letters of credit rights, and money.

(4)(a) Ceased employers who elect to pay the full actuarial cost by lump-sum shall make the payment by June 30, 2021, pursuant to KRS 61.522(3)7.

(b) If the lump-sum payment is not received by the Systems at the retirement office on or before June 30, 2021, then the ceased employer shall make installment payments and the payment amount shall be recalculated based upon this adjustment with interest added for fiscal year 2021-2022. The ceased employer shall also remit all outstanding installments payments.

(c) Systems shall notify any ceased employer who has not submitted the lump-sum payment on June 21, 2021, of the impending deadline and the consequences of failing to timely pay.

(5)(a) If the ceased employer elects to pay the actuarial cost of cessation in installment payments, the cost shall be financed by the Systems pursuant to KRS 61.522(8)(g).

(b) If the ceased employer elects for nonhazardous employees who began participating in the Systems prior to January 1, 2014, to continue participating in KERS, and the employer is not projected to pay the full actuarial cost in thirty (30) years, then the Systems shall adjust the payments so that the full actuarial costs are paid at

the end of the thirty (30) year period.

(c) If the ceased employer elects for nonhazardous employees who began participating in the Systems prior to January 1, 2014 to cease participating in KERS, and the employer is not projected to pay the full actuarial cost in thirty (30) years, then the employer shall pay the amount financed through the Systems pursuant to KRS 61.522(8)(g)1. and no adjustments shall be made to the monthly payments nor shall additional amounts be charged after the thirty (30) year period.

(6)(a) Interest shall be assigned to the principal amount annually for both lump-sum and installment payment plans beginning on July 1, 2020. A ceased employer who elects to pay the actuarial cost by installments may at any time submit payments towards the remaining balance.

(b) If the employer elects to pay the costs in installment payments, the annual payments beginning on or after July 1, 2020, including interest will be calculated as a set dollar value and then divided into monthly installments.

(c) If the ceased employer submits more than the required payments for a fiscal year, the total cost will be reduced but the monthly installment amounts will remain unchanged because the monthly amounts are based upon the set dollar value of the annual payments. Pursuant to KRS 61.522(8)(g), interest amounts are separate from total cost and interest and interest attributable to the actuarial cost will not be calculated until the cost is finalized. However, any early or additional payments may reduce the number of payments required if the full actuarial cost is paid in less than thirty (30) years from June 30, 2020.

(7) Payments made prior to the notice of full actuarial cost shall be credited to the amount and considered early or additional payments pursuant to (6)(c) of this section.

Section 11. (1)(a) If a ceased employer elects to make installment payments, the Systems shall submit invoices to the employer for payments owed, which are not paid through the normal monthly reports.

(b) The employer shall remit payment to the Systems by the due date provided on the invoice.

(2)(a) If a ceased employer that elected to make installment payments is delinquent for ninety (90) days or more from the due date of an outstanding invoice, and the ceased employer elected for nonhazardous employees with participation dates prior to January 1, 2014, to continue participating, then the participation of those employees in KERS through the ceasing employer will be suspended until the ceased employer has remitted the required payments. The employees shall not earn service credit, including service credit purchased pursuant to KRS 61.552, or benefits in KERS through the ceased employer during the suspension period.

(b) Any employee contributions provided to the Systems will be held until the ceased employer remits the required payments.

(3) Systems shall notify the Finance and Administration Cabinet of any ceased employer that is delinquent for ninety (90) days or more in making installment payments pursuant to KRS 61.675(4)(c).

(4) Systems may file an action in Franklin Circuit Court to collect delinquent installment payments and attach general fund appropriations in order to satisfy the payments owed.

Section 12. (1)(a) Current and former employees of the ceased employer shall not be eligible to purchase service credit pursuant to KRS 61.552 after June 30, 2020, unless the current employee has continued participation in KERS because of the employer election.

(b) A current employee of a ceased employer continuing participation in KERS because of the employer election may purchase service credit pursuant to KRS 61.552 even if that service is related to employment with the ceased employer.

(2) Former employees shall not be eligible to purchase service credit related to employment with a ceased employer, pursuant to KRS 61.552 after June 30, 2020.

(3) A person eligible to purchase service credit pursuant to KRS 61.552 related to employment with the ceased employer, must either complete the purchase or enter into a service purchase agreement with the Systems no later than June 30, 2020 unless the individual is a current employee of the ceased employer who has continued participation in KERS because of the employer election.

(4) A person may purchase service credit pursuant to KRS 61.552(20) if the service is not related to employment with the ceased employer, unless the person is a current employee that has continued participation in KERS because of the employer election.

(5) A former employee of a ceased employer who becomes employed with a participating employer after terminating employment with the ceased employer may purchase service credit pursuant to KRS 61.552 that is not related to employment with a ceased employer.

Section 13. If any due date in this regulation or if an installment payment 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 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 7726, "Request for Estimated Cost of Voluntary Cessation from KERS under KRS 61.522(8)," August 2019;

(b) Form 7727, "Actuarial Study for Quasi-Governmental Employer Cessation", November 2019;

(c) Form 1500, "KRS 61.522 60-Day Transfer Request", November 2019; and

(d) Form 7728, "Payment Election for Quasi-Governmental Employer Cessation", November 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: November 15, 2019

FILED WITH LRC: November 15, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2020 at 9:00 a.m. at the Kentucky Retirement Systems, 1270 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2020. 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: Mark C. Blackwell, Executive Director Office of Legal Services, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8645, fax (502) 696-8801, email Legal.Non-Advocacy@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mark C. Blackwell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the processes and procedures for a quasi-governmental employer participating in the Kentucky Employees Retirement System to voluntarily cease participation in accordance with KRS 61.522(8).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the processes and procedures for a quasi-governmental employer participating in the Kentucky Employees Retirement System to voluntarily cease participation in accordance with KRS 61.522(8).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by establishing the processes and

procedures for a quasi-governmental employer participating in the Kentucky Employees Retirement System to voluntarily cease participation in accordance with KRS 61.522(8).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the processes and procedures for a quasi-governmental employer participating in the Kentucky Employees Retirement System to voluntarily cease participation in accordance with KRS 61.522(8).

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

(a) How the amendment will change this existing administrative regulation: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Retirement Systems and quasi-governmental employers wishing to cease participation in the Kentucky Employees Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation will allow provide certain quasi-governmental employers a limited window in which to cease participation in Kentucky Employees Retirement System.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The quasi-governmental employer would have its internal cost of voluntary ceasing participating, which would vary by employer. As required by the statute, KRS 61.522, the employer must also pay all the administrative costs incurred by Kentucky Retirement Systems. This cost will also vary by employer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The quasi-governmental employer will be permitted to voluntarily cease participating in the Kentucky Employees Retirement System.

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

(a) Initially: The cost of filing the application and completing the process of voluntary withdrawal.

(b) On a continuing basis: There will be no continuing cost to the employer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Retirement Systems are paid from the Retirement Allowance Account (trust and agency funds).

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees. The employer must pay the administrative costs incurred by Kentucky Retirement Systems pursuant to KRS 61.522.

(9) TIERING: Is tiering applied? Tiering is not applied. All quasi-governmental employers seeking to voluntarily cease participation are subject to the same processes and procedures.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Retirement Systems and quasi-governmental employers eligible to voluntarily cease participation in the Kentucky Employees Retirement System pursuant to KRS 61.522(6).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.522.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The employer will have to pay its internal administrative costs and Kentucky Retirement Systems' administrative costs. The administrative regulation generates no revenue, but will allow employers to cease participation, which will eliminate the requirement for them to pay continuing employer contributions after cessation. The employer is required by statute to pay the actuarial cost of cessation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? Ultimately, the cost to Kentucky Retirement Systems should be negligible, as KRS 61.522 requires voluntary ceasing quasi-governmental employers to pay its internal administrative costs and Kentucky Retirement Systems' administrative costs related to cessation.

(d) How much will it cost to administer this program for subsequent years? KRS 61.522 requires the ceasing quasi-governmental employer to pay its internal administrative costs and Kentucky Retirement Systems' administrative costs so the cost to Kentucky Retirement Systems should be negligible.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

**FINANCE AND ADMINISTRATION CABINET**
**Kentucky Retirement Systems**
**(New Administrative Regulation)**

**105 KAR 1:445. Electronic ballots in Trustee elections.**

RELATES TO: KRS 61.645
STATUTORY AUTHORITY: KRS 61.645(4)(j), 61.645(9)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) requires the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852 and to conform to federal statutes and regulations. KRS 61.645(4)(j) specifically authorizes Kentucky Retirement Systems to promulgate an administrative regulation to implement the use of electronic ballots in the trustee election process while still permitting paper ballots upon request. This administrative regulation establishes the procedures and requirements for casting electronic and paper ballots, as well as the tabulation of the ballots, for trustee elections.

Section 1. Definitions. (1) "Ballot" means a voting instrument, either electronic or paper, that shall include the candidate's:

(a) Name;

(b) Recent photograph;

(c) City and county of residence;

(d) Employing agency and position title or the employing

agency from which the candidate last worked or retired and the position title of the last position held;

(e) Education including schools and/or universities attended and degrees earned;

(f) Whether or not the candidate has been convicted of a felony;

(g) Any professional licenses or certifications held by the candidates;

(h) Any organization of which the candidate is a member that is listed on the candidate's application; and

(i) The website address where each candidate's application filed by the candidate and the candidate's resume shall be available for viewing.

(2) "Candidate" means a participating employee, former employee whose membership has not been terminated under KRS 61.535, or a retired member, who meets the requirements of KRS 61.645(6), and is one (1) of not more than three (3) nominees from the Board of Trustees for each vacant position, nominated by petition by the membership of the system for which the vote is being taken, or who is written-in on a valid ballot.

(3) "Eligible voter" means any person who 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 who has provided Kentucky Retirement Systems ("Systems") with a valid email address or, if a paper ballot is requested pursuant to KRS 61.645(4)(j), a valid physical address.

(4) "Term of Office" means the period of membership on the Board of Trustees, which shall begin on April 1 of the year elected or appointed and shall end on March 31 four (4) years thereafter.

(5) "Valid Ballot" means a ballot either emailed or mailed by an eligible voter that has properly designated the voter's choice of eligible candidate or candidates for the number of vacancies being filled. If an electronic ballot, the ballot must be cast on or before March 1. If a paper ballot, the ballot must be postmarked to the required address on or before March 1. Any ballot that does not meet this standard shall be invalid and not accepted. Moreover, each eligible voter shall only submit one (1) ballot and any subsequent ballot received will be invalid.

Section 2. (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 and/or Retiree Self-Service. The Systems shall notify the eligible voter that an electronic ballot will be provided unless a paper ballot is requested during the requisite time. The Systems shall request that the eligible voter verify the email address attached to their account.

(2) An eligible voter may also submit a written request for a paper ballot if received on or before November 30 of the year preceding the expiration of the term of office and the trustee election. Once an eligible voter elects to receive a paper ballot, the voter shall receive paper ballots for all subsequent elections unless the voter requests to vote electronically. A request to modify the type of ballot 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.

Section 3. (1) The 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 contain instructions defining what constitutes a valid ballot. The Systems shall notify the eligible voter on the ballot that any invalid ballot shall not be counted.

(2) For both electronic and paper ballots, the eligible voter shall check a square opposite of the candidate of their 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. (1)(a) Electronic ballots shall be emailed 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) 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. If the eligible voter does not have an email address on file or the Systems receives notification that the email address is invalid so that the electronic ballot cannot be sent, the Systems shall mail a paper ballot 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 as long as the notification is received on or before one (1) week prior to the date the vote must be cast.

(c) 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) The Systems shall use the mailing address on file with the Systems on or before December 31 of the year preceding the expiration of the term of office and the trustee election. 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 as long as the notification is received on or before one (1) week prior to the date the vote must be cast.

(c) The Systems shall be held harmless for any incorrect mailing address submitted by the member or inadvertently entered by the Systems.

Section 5. (1) 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 ballot to ascertain whether it is a valid ballot.

(2) Ballots returned to the Systems for faulty addresses, or ballots that are incorrectly returned or mailed to the street address of the Systems, shall be invalid. All invalid ballots shall remain unopened and returned to the board's contracted auditor. Once the final results are announced, the invalid ballots shall be shredded by the board's contracted auditing firm and a certificate shall be provided to the Systems confirming the shredding of the invalid ballots.

Section 6. (1) After totaling the votes cast, the board's contracted auditing firm shall certify the results of the election in writing to the Chair of the Board of Trustees in care of the Executive Director. The certified results shall be received at the retirement office on or before March 15.

(2) Once all electronic and paper ballots have been counted and the election is final, the contracted auditing firm shall destroy all ballots, including data generated and stored from electronic ballots, and provide a certificate confirming the destruction of the ballots to the Systems.

Section 7. Candidates elected by a plurality of the votes cast by eligible voters shall begin their term of office on April 1.

Section 8. 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.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: November 7, 2019

FILED WITH LRC: November 8, 2019 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 2020 at 9:00 a.m. at the Kentucky Retirement Systems, 1270 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2020. 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: Mark C. Blackwell, Executive Director Office of Legal Services, Kentucky Retirement Systems, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801, email Legal.Non-Advocacy@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mark C. Blackwell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for casting electronic and paper ballots, as well as the tabulation of the ballots, for trustee elections in accordance with KRS 61.645(6).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures and requirements for casting electronic and paper ballots, as well as the tabulation of the ballots, for trustee elections in accordance with KRS 61.645(6).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by establishing the procedures and requirements for casting electronic and paper ballots, as well as the tabulation of the ballots, for trustee elections in accordance with KRS 61.645(6).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the procedures and requirements for casting electronic and paper ballots, as well as the tabulation of the ballots, for trustee elections in accordance with KRS 61.645(6).

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

(a) How the amendment will change this existing administrative regulation: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Retirement Systems, candidates seeking election to the Board of Trustees, and eligible voters for the trustee elections.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation will require eligible voters to cast electronic ballots for trustee elections, unless they request a paper ballot.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Initially, Kentucky Retirement Systems will incur additionally costs to notify eligible voters regarding the change in the law. However, the switch to electronic ballots should save Kentucky Retirement Systems significant costs associated with creating physical ballots and placing them in the mail.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Eligible voters will be able to conveniently cast electronic ballots. Kentucky Retirement Systems will save significant costs in printing and postage.

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

(a) Initially: The initial cost of sending out notice to the members. Much of this notification will be done electronically.

(b) On a continuing basis: Kentucky Retirement Systems will save significant costs in printing and postage.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Retirement Systems are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All eligible voters are subject to the same processes and procedures.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Retirement Systems.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.645.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Initially, Kentucky Retirement Systems will incur additionally costs to notify eligible voters regarding the change in the law. However, the switch to electronic ballots should save Kentucky Retirement Systems significant costs associated with creating paper ballots and placing them in the mail.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? The cost to Kentucky Retirement Systems should be negligible as much of the notification sent out to educate our members will be sent with documents.

(d) How much will it cost to administer this program for subsequent years? The switch to electronic ballots should save Kentucky Retirement Systems significant costs associated with creating paper ballots and placing them in the mail.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**ENERGY AND ENVIRONMENT CABINET**
**Department for Environmental Protection**
**Division of Water**
**(Repealer)**

**401 KAR 5:091. Repeal of 401 KAR 5:090.**

RELATES TO: KRS Chapters 151, 224

STATUTORY AUTHORITY: KRS 151.125, 224.10-100, 224.70-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151.125 and 224.10-100 require the cabinet to promulgate administrative regulations pertaining to the issuance of permits and the prevention, abatement, and control of water pollution. The administrative regulation being repealed requires registration and

reporting of oil and gas facilities and related fees. There is no federal mandate for the repeal.

Section 1. 401 KAR 5:090, Control of water pollution from oil and gas facilities, is hereby repealed.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 29, 2019

FILED WITH LRC: November 14, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2020 at 6:00 p.m. Eastern Time at 300 Sower Boulevard, Training Room 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 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 shall be accepted through January 31, 2020 and shall receive the same consideration as verbal comments. 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: Carole J. Catalfo, Division of Water, RPPS, 300 Sower Boulevard, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 782-6914, fax (502) 564-4245, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 401 KAR 5:090 Control of water pollution from oil and gas facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to remove redundancy and conflicts with Kentucky statutes and regulations, and to provide clarity to the regulated community. 401 KAR 5:090 required the registration of oil and gas facilities that might otherwise be exempt from the Kentucky Pollutant Discharge Elimination System (KPDES) program. The KPDES individual discharge permit fees established in KRS 224.10-230 and KRS 224.70-120 in 1990 made the permit fee established in 401 KAR 5:090 September 4, 1986 no longer applicable. For oil and gas facilities that are not subject to the KPDES program, portions of 401 KAR 5:090 have been relocated to, and are more appropriately regulated by, the Kentucky Division of Oil and Gas (DOG) regulations 805 KAR 1:110, 1:170, 1:180, and 1:190, and Division of Waste Management (DWM) regulations contained in 401 KAR Chapters 45, 47, and 48.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Stormwater construction permits for oil and gas facilities are issued under other KPDES regulations (401 KAR Chapter 5) promulgated pursuant to KRS 224.10-100 and 224.16-050. These statutes also authorize permits for produced water discharged to waters of the Commonwealth. 401 KAR 5:090 is unnecessary because the remainder of 401 KAR Chapter 5, DOG regulations 805 KAR 1:110, 1:170, 1:180, and 1:190, and Division of Waste Management (DWM) regulations contained in 401 KAR Chapters 45, 47, and 48, provide appropriate coverage for these facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of 401 KAR 5:090 will eliminate the regulatory fee conflict with KRS 224 and redundancy with other regulations. Applicable portions of 401 KAR 5:090 have been relocated to, and are more appropriately regulated by, the DOG regulations 805 KAR 1:110, 1:170, 1:180, and 1:190, and Division of Waste Management (DWM) regulations contained in 401 KAR Chapters 45, 47, and 48.

(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 not applicable because this is a repeal of, rather than an amendment to, an existing regulation.

(b) The necessity of the amendment to this administrative regulation: This is not applicable because this is a repeal of, rather than an amendment to, an existing regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not applicable because this is a repeal of, rather than an amendment to, an existing regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not applicable because this is a repeal of, rather than an amendment to, an existing regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of this regulation will affect businesses involved in oil and gas exploration, however, the exact number is unknown. There are approximately 1,060 active oil and gas operators in the Commonwealth and approximately 10,000 active oil and gas registrations; however, a business may have multiple registrations. Approximately 250 oil and gas registrations and transport-off-site permits are issued each year. The number of entities involved in oil and gas exploration as individuals, organizations, or state and local government is negligible.

(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: Businesses involved in oil and gas exploration may be required to obtain stormwater construction permits depending on the size and scope of their activities, and will need to review the amended DOG regulations in 801 KAR Chapter 1 for compliance.

(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 permit fee for oil and gas businesses that qualify for a general stormwater construction permit. For those that are required to obtain an individual stormwater permit, the fee for a five-year permit pursuant to KRS 224.70-120 is $2,100. Approximately 10% (25) of each year's stormwater permits are expected to be individual permits because of disturbance size or stream considerations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This repeal eliminates fees for construction of holding pits, construction of disposal wells, and operation of disposal wells which were made obsolete by KRS 224.10-230 and KRS 224.70-120 in 1990. Businesses will be lawfully permitted to discharge as established in other regulations of 401 KAR Chapter 5 and will benefit from consistency between Division of Water, Division of Oil and Gas, and Division of Waste Management regulations.

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

(a) Initially: This administrative regulation will have no impact on costs to the Division of Water.

(b) On a continuing basis: This administrative regulation will have no impact on costs to the Division of Water.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation will have no impact on funding for implementation or enforcement.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this

repealer administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local government will not be affected by this repeal. The Division of Water, Division of Waste Management, and Division of Oil and Gas are the divisions of state government affected by this repeal.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, KRS 224.16-050, and 33 U.S.C. 1251-1387.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No costs will be incurred from this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No costs will be incurred.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The Division of Water does not anticipate any fiscal impact because this administrative regulation is a repealer.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal regulations constituting the federal mandate are .

2. State compliance standards. The state compliance standards are established in KRS 151.125, 224.10-100, 224.16-050, and 224.70-110.

3. Minimum or uniform standards contained in the federal mandate 33 U.S.C. 1251-1387.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter or additional or different responsibilities or requirements.

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM**
**Kentucky Fire Commission**
**(New Administrative Regulation)**

**739 KAR 2:150. Alan ''Chip'' Terry Professional Development and Wellness Program.**

RELATES TO: KRS 95A.292

STATUTORY AUTHORITY: KRS 95A.292

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.292(4) requires the Commission to promulgate administrative regulations to implement the provisions of KRS 95A.292. This administrative regulation establishes (1) the qualifications and duties of persons used by the Commission to implement and administer the Alan "Chip" Terry Professional Development and Wellness Program; (2) the curriculum, programming, seminar type, and treatment modalities used in the program; (3) the extent to which a participating firefighter's relatives or friends may participate in seminars; (4) the standards by which professional and volunteer firefighters from other states may be accepted into the program by the executive director; and (5) a protocol for establishing reciprocity for interagency assistance with other state, federal, and tribal professional and volunteer firefighters in administering the program.

Section 1. Definitions. (1) "IAFF" means the International Association of Fire Fighters.

(2) "Program" means the Alan "Chip" Terry Professional Development and Wellness Program.

Section 2. Instructor Qualifications. (1) Any instructor used by the commission to implement and administer the program shall:

(a) Be a professional, retired, or volunteer firefighter;

(b) Have a minimum of two (2) years experience as a peer supporter;

(c) Have a minimum of one (1) year of teaching or training experience; and

(d) Submit proof of completion of the two-day IAFF Peer Support Training, or its equivalent.

(2) Any instructor used by the commission to implement and administer the program shall have training in general stress; group processes; human communication skills; direct intervention strategies; post-traumatic stress disorder and depression; suicide awareness and postvention; addressing stigma; understanding barriers to care; and substance abuse.

Section 3. Curriculum, Programming, Seminar Type, and Treatment Modalities. (1) The curriculum, programming, and treatment modalities used in the program shall be the IAFF Behavioral Health Peer Support Training Student Manual.

(2) The seminar shall consist of a prerequisite online course and two (2), in-person, eight (8) hour day peer support seminars designed to train peer support personnel to provide peer support to other firefighters.

Section 4. Non-firefighter Participation. Each participating firefighter may permit no more than two (2) non-firefighters to attend and participate in the seminar with them.

Section 5. Out-of-state Firefighter Participation, Reciprocity, and Interagency Assistance. The executive director may permit any out-of-state, federal, or tribal professional or volunteer firefighter to participate in the seminar if the professional or volunteer firefighter intends to be employed by a Kentucky fire department or volunteer for a Kentucky volunteer fire department within one (1) year of the seminar.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "IAFF Behavioral Health Peer Support Training Student Manual", [9/2018].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Commission on Fire Protection Personnel Standards and Education, 118 James Court, Lexington, Kentucky 40505, Monday through Friday, 8:30 a.m. to 4:30 p.m.

ANDREW SCOTT, Interim Chairperson

APPROVED BY AGENCY: November 11, 2019

FILED WITH LRC: November 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on January 27, 2020 at 11:00 a.m. Eastern Standard Time at 118 James Court, Lexington, Kentucky 40505. Individuals interested in being heard at this hearing shall notify this agency in writing by 5

workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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, 2020. 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: Jonathan L. Gay, Counsel for the Kentucky Fire Commission, phone (859) 225-4714, fax (859) 225-1493, email administrativeregulations@wgmfirm.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan L. Gay

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes (1) the qualifications and duties of persons used by the Commission to implement and administer the Alan "Chip" Terry Professional Development and Wellness Program; (2) the curriculum, programming, seminar type, and treatment modalities used in the program; (3) the extent to which a participating firefighter's relatives or friends may participate in seminars; (4) the standards by which professional and volunteer firefighters from other states may be accepted into the program by the executive director; and (5) a protocol for establishing reciprocity for interagency assistance with other state, federal, and tribal professional and volunteer firefighters in administering the program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the Alan "Chip" Terry Professional Development and Wellness Program pursuant to KRS 95A.292.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 95A.292(4), the Commission must promulgate administrative regulations in accordance with KRS Chapter 13A to implement the Alan "Chip" Terry Professional Development and Wellness Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes how the Alan "Chip" Terry Professional Development and Wellness Program is to be implemented and administered.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

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

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all Kentucky professional and volunteer departments and firefighters.

(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: Attendance and participation in the program is not mandatory. Therefore, no action is required to comply 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): There is no cost to existing entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Professional and volunteer firefighters will be offered seminar-based peer support and counseling services to reduce negative mental and behavioral health outcomes.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: Approximately $25,000 per year.

(a) Initially: Approximately $25,000.

(b) On a continuing basis: Approximately $25,000 per year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Firefighters Foundation Program Fund established in KRS 95A.220, grants, gifts, state appropriations, 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 fee increase is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied because the administrative regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cities, counties, or taxing districts with fire departments.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 95A.292.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year? Approximately $25,000.

(d) How much will it cost to administer this program for subsequent years? Approximately $25,000 per year.

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

Revenues (+/-): None.

Expenditures (+/-): Approximately $25,000 per year.

Other Explanation: None.

**CABINET FOR HEALTH AND FAMILY SERVICES**
**Department for Medicaid Services**
**Division of Fiscal Management**
**(New Administrative Regulation)**

**907 KAR 10:840. Hospital Rate Improvement Program.**

RELATES TO: KRS 45.229, 142.303, 205.565, 205.637, 205.638, 205.639, 205.640, 205.6405, 205.6406, 205.6407, 205.6408, 216.380, 42 C.F.R. 413.17, 433.51, 438.340, 440.140, 447.272, 42 U.S.C. 1396a, 1395ww

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.520, 205.560, 205.6406(13), 42 C.F.R. 447.252, 447.253, 42

U.S.C. 1396a

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented, by federal law to qualify for federal funds. KRS 205.6406(13) requires the department to promulgate an administrative regulation to implement the Hospital Rate Improvement Program, KRS 205.6405 to 205.6408. This administrative regulation establishes the requirements for implementing the Hospital Rate Improvement Program for qualifying hospitals.

Section 1. Definitions. (1) "Assessment" is defined by KRS 205.6405(1).

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

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

(4) "Program year" is defined by KRS 205.6405(14).

(5) "Qualifying hospital" is defined by KRS 205.6405(16).

(6) "Received date" means the date a claim is accepted and approved into the Medicaid Management Information System and does not mean the date a claim is actually paid.

(7) "Upper payment limit" or "UPL" is defined by KRS 205.6405(19).

Section 2. Hospital Rate Improvement Program. (1) Prior to the start of each program year and in accordance with the payment methodology required by KRS 205.6406(2), the department shall calculate for each qualifying hospital:

(a) A per-discharge uniform add-on amount that the qualifying hospital is eligible to receive as a supplemental payment for the program year for Medicaid fee-for-service discharges; and

(b) A per discharge uniform add-on amount that the qualifying hospital is eligible to receive as a supplemental payment for the program year for Medicaid managed care discharges.

(2) With the exception of the initial implementation year, no less than thirty (30) days prior to the beginning of each program year, the department shall provide each qualifying hospital written notice of the total per-discharge uniform add-on amounts for both Medicaid fee-for-service and Medicaid managed care discharges. The notice shall include the data sources and methodologies used to arrive at the value for each variable upon which the qualifying hospital's per-discharge uniform add-on amounts shall be calculated for the program year.

(3) For each quarter in a program year, the department shall:

(a) Calculate each qualifying hospital's supplemental payments for Medicaid fee-for-service and Medicaid managed care in accordance with KRS 205.6406(3) through (11) by:

1. Excluding all inpatient claims with discharge dates preceding October 1, 2018 from enhanced payment calculations;

2. Reducing the number of inpatient claims eligible for enhanced reimbursement by the number of previously enhanced claims that have been voided in the Medicaid Management Information System; and

3. Excluding from enhanced payment calculations partial or adjusted inpatient claims that have previously received an enhanced payment;

(b) Make a quarterly Medicaid fee-for-service supplemental payment to each qualifying hospital, or its designee acting as a fiscal intermediary, in accordance with the methodology in KRS 205.6406(3)(a) and (c); and

(c) Make a quarterly Medicaid managed care supplemental payment to each qualifying hospital, or its designee acting as a fiscal intermediary, in accordance with the methodology in KRS 205.6406(3)(b), (d), and (e).

(4) Payment of the quarterly Medicaid managed care supplemental payment shall be made by distribution to each Medicaid managed care organization through a quarterly supplemental capitation payment.

(5) The department shall submit with, or prior to, the quarterly supplemental capitation payment directions to the Medicaid managed care organization for the payment of the quarterly Medicaid managed care supplemental payments to qualifying hospitals.

(6) In accordance with KRS 205.6406(6), each Medicaid managed care organization shall remit to each qualifying hospital, or its designee, as directed by the department the quarterly Medicaid managed care supplemental payment within five (5) business days of receipt of the quarterly supplemental capitation payment. The department shall establish contractual penalty provisions to require that each Medicaid managed care organization remit the required amounts within five (5) business days.

(7) In accordance with KRS 205.6406(9), a qualifying hospital may seek review by the department of any quarterly supplemental payment that the qualifying hospital suspects is in error and affects the amount of the quarterly supplemental payment by five (5) percent or more.

(a) The qualifying hospital shall submit a detailed listing of any disputed claim or claims for department consideration and potential updates to the Medicaid Management Information System.

(b) Once each claim is received and validated in the Medicaid Management Information System, the department may adjust the qualifying hospital's future quarterly supplemental payment to account for the correction.

(c) If the department determines that a correction is not warranted, the hospital may request an administrative appeal pursuant to 907 KAR 1:671.

(8) In order to receive a supplemental payment and to pay the assessment for that quarter, an entity shall be a qualifying hospital each day of a quarter for the program year.

(9) Medicaid Management Information System (MMIS) fee-for-service and managed care encounter data, queried by the claim received date, shall be utilized to calculate the quarterly payments.

(10) For each quarter in a program year, the department shall:

(a) Calculate each qualifying hospital's per-discharge hospital assessment in accordance with the methodology in KRS 205.6406(3)(g) and (h); and

(b) Provide notice to each qualifying hospital in accordance with KRS 205.6406(3)(i).

(11) A qualifying hospital's per-discharge hospital assessment shall be calculated using the Medicare cost report period ending in the calendar year that is two (2) calendar years prior to the first day of a program year. For example, for the program year beginning July 1, 2019, cost report periods ending in calendar year 2017 shall be utilized.

(a) If a qualifying hospital's cost report period referenced in this subsection is greater than or less than a normal calendar year of 365 days, the total discharges used in accordance with KRS 205.6406(3)(g) shall be annualized to a 365-day period.

(b) If a qualifying hospital is newly enrolled in the Medicaid program and does not have cost report information available for the period established in this subsection, the department may utilize the cost report information of a comparable hospital to approximate the newly enrolled hospital's utilization.

(12) A qualifying hospital shall pay its calculated per-discharge hospital assessment in accordance with KRS 205.6406(7).

(13) If a hospital assessment is not received in a timely manner, the department may deny or withhold future quarterly supplemental payments until the assessment is submitted.

(14) A qualifying hospital may authorize a third-party entity to serve as a fiscal intermediary to facilitate the implementation of this administrative regulation by providing letter notice to the department.

Section 3. Reporting Requirements (1) Throughout a program year, a qualifying hospital shall submit any documentation or information to the department that the department requests in a timely manner as designated by the department. This request may include any documentation pertaining to:

(a) Resolution of a quarterly supplemental payment that the qualifying hospital suspects is in error; or

(b) Quality metrics set forth in the department's Quality Strategy filed with the Centers for Medicare and Medicaid Services pursuant to 42 C.F.R. 438.340.

(2) If a qualifying hospital fails to provide the department with any requested documentation in a timely manner, the department may deny or withhold future quarterly supplemental payments, until the documentation is submitted.

Section 4. Upper Payment Limit. A supplemental payment referenced in this administrative regulation is not intended to cause aggregate Medicaid hospital reimbursement to exceed the aggregate statewide upper payment limit for privately-owned and non-state government-owned hospitals established in:

(1) 42 C.F.R. 447.271;

(2) 42 C.F.R. 447.272; or

(3) Any other applicable statute or administrative regulation.

Section 5. 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.

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 29, 2019

FILED WITH LRC: October 30, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 27, 2020 at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2020. 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: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services (DMS) hospital rate improvement program for care provided by inpatient acute care hospitals to Medicaid recipients. This administrative regulation serves to implement HB 320 from the 2019 Regular Session of the Kentucky General Assembly. Specifically, DMS is required to calculate supplemental payments, notify each qualifying hospital of total per-discharge uniform add-on amounts, and make quarterly supplemental payments. The administrative regulation also requires DMS to distribute supplemental payments to qualifying hospitals by means of a quarterly supplemental capitation payment to managed care organizations (MCOs). The MCOs then forward the payments to the qualifying hospitals. The MCOs are required to remit the payment within 5 days, and failure to forward the entire payment within 5 days will result in the department assessing contractual penalties. The administrative regulation also establishes requirements relating to the hospital specific assessments, and establishes departmental actions when a payment is not received in a timely manner.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's reimbursement provisions and penalty provisions for the hospital rate improvement program required by 2019 HB 320.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation implements the provisions of 2019 HB 320.

(d) How this administrative regulation currently assists or shall assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing a statutorily required hospital rate improvement program.

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

(a) How the amendment shall 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 shall 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 government affected by this administrative regulation: The amendment applies to all inpatient acute care hospitals. Currently, there are approximately sixty-five (65) acute care hospitals participating in the Kentucky Medicaid program.

(4) Provide an analysis of how the entities identified in question (3) shall 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) shall have to take to comply with this administrative regulation or amendment. Participating hospitals will submit required assessments and comply with reporting requirements to enable the department to calculate each quarterly assessment.

(b) In complying with this administrative regulation or amendment, how much shall it cost each of the entities identified in question (3): Costs will vary by hospital and reporting period for the payment of assessments, the supplemental payments disbursed will likely exceed the amount of assessments.

(c) As a result of compliance, what benefits shall accrue to the entities identified in question (3): Acute care inpatient hospitals will benefit from enhanced rates available as part of this provider assessment program submitted as supplemental payments via the MCOs.

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

(a) Initially: DMS anticipates no additional costs to the department to implement this administrative regulation beyond the appropriation contained in 2019 HB 320.

(b) On a continuing basis: DMS anticipates no additional costs to the department 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 sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds.

(7) Provide an assessment of whether an increase in fees or funding shall 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 shall 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: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied in that different reimbursement methodologies are utilized in relation to different

hospital types. In addition in-state and out-of-state hospitals receive different reimbursement. However, the administrative regulation applies equally to all regulated entities within each hospital type.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(30)

2. State compliance standards. KRS 205.520(3) states, "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. Medicaid reimbursement for services is required to be consistent with efficiency, economy, and quality of care and be sufficient to attract enough providers to assure access to services. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to:
".. .. provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

4. Shall this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The policy is not stricter or different than the federal standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) shall be impacted by this administrative regulation? The Department for Medicaid Services (DMS) shall be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), and 42 U.S.C. 1396a(a)(30).

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

(a) How much revenue shall this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS anticipates that this administrative regulation will be revenue neutral to the department in the first year.

(b) How much revenue shall this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates that this administrative regulation will be revenue neutral to the department in subsequent years.

(c) How much shall it cost to administer this program for the first year? The costs associated with this program will be met by the appropriations contained in 2019 HB 320 in the first year of operation.

(d) How much shall it cost to administer this program for subsequent years? The costs associated with this program will be met by the appropriations to the department contained in 2019 HB 320 in subsequent years.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

# ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
## Minutes of November 12, 2019

**Call to Order and Roll Call**
**Call to Order and Roll Call**

The November meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, November 12, 2019 at 10:00 a.m. In Room 149 of the Capitol Annex. Representative Hale, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the October 2019 were approved.

**Present were:**
**Members:** Senators Perry Clark, Alice Forgy Kerr, Julie Raque Adams and Stephen West. Representatives David Hale, Deanna Frazier, and Tommy Turner.

**LRC Staff:** Sarah Amburgey, Stacy Auterson, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Klaber.

**Guests:** Sarah Levy, Travis Powell, Council on Postsecondary Education; Andrew English, Auditor of Public Accounts, Scott Aubrey, Division of Real Property; Joe Donohue, Board of Accountancy, Lois Ann Disponett, Marc Manley, Real Estate Commission; Bryan Morrow, Board of Licensed Professional Counselors; Chris Garland, Rich Storm, Karen Waldrop, Department of Fish and Wildlife Resources; Lesly Davis, Michael Mullins, Office of Administrative Hearings; Peter Goodmann, Tony Hatton, Department of Environmental Protection; Doug Back, Matt Henderson, Jon Johnson, Larisa Plecha, Bryan Prater, Department of Vehicle Regulation; Tony Cotto, Lee Webb, Department of Insurance; Stephanie Brammer-Barnes, Steve Davis, Office Inspector General; Jonathan Scott, Department for Medicaid Services; Laura Begin, Rachael Ratliff, Department for Community Based Services; Michael Jarrell, Cindy Seip, Betsy Johnson, Bruce Linder, Chris McCuthion, Chris McCreary, Heidi Schissler, and Tim Veno.

**The Administrative Regulation Review Subcommittee met on Tuesday, November 12, 2019, and submits this report:**

**Pursuant to KRS 13A.335(2), the subcommittee reconsidered the following administrative regulation, which was found deficient at the October 8 meeting of the subcommittee, and approved a motion that the administrative regulation was not deficient.**

**TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing: Driver Improvement**

601 KAR 13:100. Medical standards for operators of motor vehicles. Please see this administrative regulation in the next section of these minutes for discussion and action information.
*Compiler's Note: Pursuant to KRS 13A.335(3)(c), Section 13, which reflected the finding of deficiency, was deleted from this administrative regulation.*

**Administrative Regulations Reviewed by the Subcommittee:**

**COUNCIL ON POSTSECONDARY EDUCATION: Nonpublic Colleges**

13 KAR 1:020. Private College licensing. Sarah Levy, executive director, and Travis Powell, vice president and general counsel, represented the council.

In response to a question by Co-Chair Hale, Mr. Powell stated that this administrative regulation allowed the council to better protect students and consumers by ensuring that institutions kept electronic records, which were more secure and searchable. Electronic records were also advantageous if an institution closed or needed to transfer data.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**AUDITOR OF PUBLIC ACCOUNTS: Audits**

45 KAR 1:050. Audits of fiscal courts. Andrew English, general counsel, and Farah Petter, assistant state auditor, represented the auditor.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**FINANCE AND ADMINISTRATION CABINET: Office of the Secretary: Property**

200 KAR 6:015. Real property inventories. Scott Aubrey, division director, represented the office.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**BOARDS AND COMMISSIONS: Board of Accountancy**

201 KAR 1:100. Continuing professional education requirements. Joe Donohue, board counsel, represented the board.
A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 5, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 1:190. Examination sections, applications, and procedures.
A motion was made and seconded to approve the following amendments: to amend Sections 3 through 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.

**Real Estate Authority: Real Estate Commission**

201 KAR 11:002. Repeal of 201 KAR 011:030, 201 KAR 011:045, 201 KAR 011:062, 201 KAR 011:090, 201 KAR 011:095, 201 KAR 011:100, 201 KAR 011:110, 201 KAR 011:115, 201 KAR 011:135, 201 KAR 011:145, 201 KAR 011:147, 201 KAR 011:175, 201 KAR 011:180, 201 KAR 011:195, 201 KAR 011:215, 201 KAR 011:225, 201 KAR 011:230, 201 KAR 011:232, 201 KAR 011:235, 201 KAR 011:240, 201 KAR 011:245, 201 KAR 011:250, 201 KAR 011:300, 201 KAR 011:350, 201 KAR 011:400, 201 KAR 011:410, 201 KAR 011:440, 201 KAR 011:450, and 201 KAR 011:460. Lois Ann Disponett, chair; Marc Manley, acting general counsel; and Tony Cotto, executive advisor, represented the commission. Michael Jarrell, owner and broker, First Nations Realty, appeared in opposition to 201 KAR 11:011 and 11:105.

In response to a question by Co-Chair Hale, Mr. Cotto stated that the commission had engaged with stakeholders extensively over the last year to develop this administrative regulation package. Multiple public hearings were held, and the commission made amendments and compromises based on most of the public comments.

Mr. Jarrell requested further amendments to 201 KAR 11:011 and 11:105, related to issues of communications and technology. Government oversight was not keeping track with

technological changes, which created opportunities for misrepresentation, especially pertaining to advertising. Technologies such as email and Facebook posed challenges that were not sufficiently addressed by this administrative regulation package. Mr. Jarrell strongly disagreed that, as established in 201 KAR 11:011, private communications should be exempt from licensee identification until a relationship for real estate services was clearly established. It was a bad precedent for real estate licensees to be allowed to not disclose identification via regular mail and email. 201 KAR 11:105 established the One-click requirement for licensee identification, which required a licensed realtor to self identify within one (1) click of a Web site advertisement. Internet advertisements were generated from individualized algorithms; therefore, a consistent One-click requirement seemed ineffective. Licensee identification should be on every page of real estate advertisement or materials.

In response to a question by Co-Chair Hale, Mr. Cotto stated that the One-click requirement ensured that licensee identification was within one (1) click of a Web site advertisement. The commission believed that the One-click requirement was the most comprehensive way to promote licensee identification because the agency did not have authority over the platforms themselves. Mr. Manley stated that the licensee identification exemption for private communication only applied if confidential information had not been shared with the licensee. Additionally, advertisements were not exempt; therefore, unsolicited emails should not be a major concern. Because it was not possible to anticipate technological changes, the general One-click requirement was the most comprehensive way to promote licensee identification.

In response to questions by Co-Chair West, Mr. Manley stated that a licensee would be required to self identify in an advertisement or in communication, such as mail or email, if real estate advertisement takes place or if confidential information regarding real estate is included.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 11:011. Definitions for 201 KAR Chapter 11.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 11:105. Advertising.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6 and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 11:121. Standards of professional conduct.

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 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 11:170. Education provider requirements.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY FUNCTION and CONFORMITY paragraphs and Sections 1 through 7, 9 through 12, and 16 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 11:190. Consumer and administrative complaints; discipline; administrative hearings.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 and 6 through 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 11:210. Licensing, education, and testing requirements.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph; Sections 1 through 4 and 6 through 15; and material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 11:220. Errors and omissions insurance requirements.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 11:461. Repeal of 201 KAR 011:420.

**Board of Respiratory Care**

201 KAR 29:015. Fees. Tony Cotto, executive advisor, represented the board.

**Board of Licensed Professional Counselors**

201 KAR 36:060. Qualifying experience under supervision. Bryan Morrow, attorney, represented the board.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**TOURISM, ARTS, AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game**

301 KAR 2:049. Small game and furbearer hunting and trapping on public areas. Chris Garland, Wildlife Division Director; Rich Storm, commissioner; and Karen Waldrop, deputy commissioner, represented the department.

Co-Chair Hale thanked Ms. Waldrop, upon her departure from the department, for her twenty (20) years of public service.

Representative Turner stated that it was an honor to have worked with Ms. Waldrop. Her work was appreciated.

Ms. Waldrop thanked the subcommittee and staff for the years of assistance with the department's administrative regulations.

301 KAR 2:090. Means by which migratory game birds may be taken.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**ENERGY AND ENVIRONMENT CABINET: Office of the Secretary: Administration**

400 KAR 1:110. Administrative hearings relating to matters brought under KRS Chapter 350 or KRS 351.310 through 351.357. Lesly Davis, executive director, Office of Administrative Hearings, and Michael Mullins, regulation coordinator,

represented the office.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1, 5, 7, 8, and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Department for Environmental Protection: Division of Water: Water Wells**

401 KAR 6:001 & E. Definitions for 401 KAR Chapter 006. Peter Goodmann, division director, and Tony Hatton, commissioner, represented the division.

In response to a question by Co-Chair West, Mr. Hatton stated that 401 KAR 6:001, 6:211, 6:310, 6:320, and 6:350 primarily affected drilling companies with multiple drill rigs. Previously, a certified well driller was required to be on-site during well installation. This package of administrative regulations, in accordance with Senate Bill 32 from the 2019 Regular Session of the General Assembly, established a certified well driller's assistant, who may supervise well installation.

401 KAR 6:211. Repeal of 401 KAR 006:200.

401 KAR 6:310 & E. Water supply well construction practices and standards.

401 KAR 6:320 & E. Certification of water well drillers and water well driller assistants.

401 KAR 6:350 & E. Monitoring well construction practices ad standards.

**Water Quality Standards**

401 KAR 10:001. Definitions for 401 KAR Chapter 010.

401 KAR 10:026. Designation of uses of surface waters.

401 KAR 10:029. General provisions.

401 KAR 10:030. Antidegradation policy implementation methodology.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 10:031. Surface water standards.

A motion was made and seconded to approve the following amendment: to amend Section 6 to correct a unit of measurement. Without objection, and with agreement of the agency, the amendment was approved.

**TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing: Driver Improvement**

601 KAR 13:090. Medical Review Board; basis for examination, evaluation, tests. Doug Back, MD (Ophthalmology) and member, Medical Review Board; Matt Henderson, commissioner; Larisa Plecha, staff attorney; and Bryan Prater, MD (Ophthalmology) and member, Medical Review Board, represented the department. Cindy Seip, Franklin County resident, appeared in opposition to 601 KAR 13:100.

At the October 8 meeting of the Administrative Regulation Review Subcommittee, 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 requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

601 KAR 13:100. Medical standards for operators of motor vehicles.

In response to a question by Co-Chair West, Mr. Henderson stated that this administrative regulation was deferred from the October 8 meeting of the subcommittee. After that meeting, the department met with individual members to clarify the department's rationale for the requirements in this administrative regulation. The department's amendment did not make substantive changes to visual standards from the currently effective version of this administrative regulation. Certain diagnoses, such as hemianopia, did not preclude an applicant from testing for a driver's license. Each individual had the opportunity for driving evaluations, clinical examinations, and other testing opportunities, including appeals in accordance with KRS Chapter 13B.

Senator Kerr made a motion, seconded by Senator Clark, to lift the finding of deficiency on this administrative regulation. On a roll call vote, all members present voted in support of lifting the finding of deficiency. Without objection, the motion was approved.

In response to a question by Co-Chair Hale, Ms. Seip stated that she had an incomplete homonymous hemianopia and had demonstrated that she was a safe driver. She had obtained a judge-ordered driver's license. The department chose not to further amend this administrative regulation. Ms. Seip stated that her counsel indicated that it was required for the department to submit the amended version of this administrative regulation, including time for public response. For over sixteen (16) years the department denied numerous requests by Ms. Seip for a road assessment, despite the fact that KRS 186.570 required the Medical Review Board to provide technical assistance in the evaluation of a person's ability to drive safely. Ms. Seip stated that she was automatically excluded from a road assessment due to failure to meet visual standards. Ms. Seip had taken and passed two (2) road assessments, for a total of approximately five (5) hours of testing; however, the department continued to deny her a driver's license. Subsequently as a result of litigation, she obtained a judge-ordered driver's license. Ms. Seip stated that her counsel indicated that failure to include individualized opportunities for assessment opened this administrative regulation to litigation for violating the Americans with Disabilities Act.

In response to questions by Co-Chair West, Mr. Henderson stated that the department had not made further amendments to this administrative regulation since the October 8 meeting of the subcommittee. Ms. Seip was given the opportunity for a driving evaluation. The field of vision standard required at least a thirty-five (35) degree visual field in each eye. That standard remained unchanged in this version of this administrative regulation. The authorizing statutes and administrative regulations established clear standards that prohibited issuing a driver's license to applicants who did not meet those standards. It was therefore possible to pass a road assessment without meeting the required standards, which led to Ms. Seip's judge-ordered driver's license. The department was prohibited from itself issuing a driver's license to a person who did not meet the required visual field standards. It was accurate that the judge's determination in Ms. Seip's case was inconsistent with the authorizing statutes and administrative regulations regarding the visual field standards.

At the October 8 meeting of the Administrative Regulation Review Subcommittee, a motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1 and 3 through 11 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 11 to clarify that the visual acuity standard includes 20/61 "or worse." Without objection, and with agreement of the agency, the amendments were approved.

*Compiler's Note: Pursuant to KRS 13A.335(3)(c), Section 13, which reflected the finding of deficiency, was deleted from this administrative regulation.*

**PUBLIC PROTECTION CABINET: Department of Insurance: Investments**

806 KAR 7:031. Repeal of 806 KAR 007:030. Tony Cotto, executive advisor, and Lee Webb, director, represented the department.

**Agents, Consultants, Solicitors, and Adjusters**

806 KAR 9:020. False or deceptive names, titles, prohibited.
A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 9:025. Agent licensing process.
A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs; Sections 1, 5 through 7, and 9; and material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 9:030. Adjuster licensing restrictions.
A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph 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.

806 KAR 9:061. Repeal of 806 KAR 009:060.

806 KAR 9:110. Agent's rights after contract termination.
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; and (2) to delete Section 3. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 9:190. Disclosure requirements for financial institutions authorized to engage in insurance agency activities.
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 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 9:200. Volume of insurance agent exchange of business.
A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph, and Sections 2 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 9:221. Repeal of 806 KAR 009:001, 806 KAR 009:070, and 806 KAR 009:220.
A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 9:310. Life settlement licenses.
A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 and 6 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 to cross reference 806 KAR 9:025 that incorporates by reference the NAIC Individual Insurance Producer license application and the Uniform Application for Business Entity Insurance License. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 9:321. Repeal of 806 KAR 009:320.

806 KAR 9:341. Repeal of 806 KAR 009:341.

806 KAR 9:350. Recognition of financial planning certification and designation for receipt of fees and commissions.
A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Surplus Lines**

806 KAR 10:061. Repeal of 806 KAR 010:060.

**Insurance Contract**

806 KAR 14:061. Repeal of 806 KAR 014:060.

**CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Healthcare: Health Services and Facilities**

902 KAR 20:370. Operations and services; private duty nursing agencies. Stephanie Brammer – Barnes, regulation coordinator, and Steve Davis, inspector general, represented the division. Heidi Schissler, legal director, Kentucky Protection and Advocacy appeared in opposition to this administrative regulation.

In response to a question by Co-Chair West, Mr. Davis stated that the four (4) hour limit for private duty nursing stemmed from a legacy concern about encroachment into the home health jurisdiction by private duty nurses. Currently, home health and private duty nursing were separate and different services; therefore, concerns about encroachment were no longer salient. Removing the four (4) hour limit would correct gaps in coverage that were occurring. Home health agencies were required to obtain a Certificate of Need. Private duty nursing was certified through a nonsubstantive review process. There were currently only twelve (12) certified private duty nursing providers, due in some instances to the four (4) hour limit. There were also gaps in coverage due to lack of emergency service providers. The Energy Employees' Occupation Illness Compensation Act established a federal payment source for specific types of employee illnesses, such as illnesses related to gaseous diffusion operations. There were jurisdictional encroachment issues pertaining to these providers.

In response to questions by Co-Chair Hale, Ms. Schissler stated that Kentucky Protection and Advocacy supported removing the four (4) hour limit. Ms. Schissler requested that, for the protection of patients, the division amend this administrative regulation to add background check requirements for private duty nurses, including the Child Abuse and Neglect Central Registry and certain, relevant misdemeanors.

In response to questions by Co-Chair West, Ms. Schissler stated that the fee to conduct a background check pertaining to the Child Abuse and Neglect Central Registry was ten (10) dollars. There was no expected additional cost to search for certain misdemeanors because a felony check was already required.

In response to a question by Co-Chair Hale, Mr. Davis stated that the reason for not including these background checks was to keep requirements as commensurate as possible between home health providers and private duty nurses. While the cost for the background check was nominal, it was an additional burden not currently required for home health providers. Ms. Brammer – Barnes stated that there was already a requirement for a criminal records check upon initial employment, and there was nothing that prohibited a provider from disqualifying an applicant for employment based on any criminal violations. Nursing licensure requirements already included fingerprint-supported state and FBI background checks.

In response to a question by Senator Raque Adams, Mr. Davis stated that the division was not opposed to the additional background checks, but was interested in maintaining commensurate requirements for both home health providers and private duty nurses. Usually, a guardian remained present during private duty nursing care of a child. Senator Raque Adams stated that the additional cost in this case seemed to be worth the protection and this check was required for public school employees, in which case the fee was paid by the applicant. Co-

Chair West stated that the additional cost seemed to be worth the protection to children, but the amendment should clarify if the background check was an initial pre-employment check or an annual check. Ms. Schissler stated that sometimes child abuse and neglect were not treated as criminal violations and might not appear in some background checks. Mr. Davis stated that it was a pre-employment, not an annual check.

In response to questions by Co-Chairs Hale and West, Mr. Davis stated that the division would agree to an oral amendment to include requirements for a background check through the Child Abuse and Neglect Central Registry, as established in 922 KAR 1:470, and to include relevant misdemeanors. It was important that the misdemeanors be only relevant ones in order to avoid excluding well-qualified employees, because many people had misdemeanors that were unrelated to potential service. Ms. Schissler stated that Kentucky Protection and Advocacy was concerned about misdemeanors related to abuse, neglect, or exploitation of a child.

A motion was made and seconded to approve the following amendments: to amend Section 4 to: (1) require a background check through the Child Abuse and Neglect Central Registry, as established in 922 KAR 1:470; (2) comply with the formatting requirements of KRS Chapter 13A; and (3) include relevant misdemeanors as part of the background check for working with children. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 20:430 & E. Facilities specifications, operation and services; behavioral health services organizations for mental health treatment.

**Department for Medicaid Services: Division of Policy and Operations: Behavioral Health**

907 KAR 15:005 & E. Definitions for 907 KAR Chapter 015. Jonathan Scott, regulatory and legislative advisor, represented the division.

A motion was made and seconded to approve the following amendments: to amend Section 1 to: (1) comply with the drafting requirements of KRS Chapter 13A; and (2) establish a six (6) month grace period for registered behavior technicians to complete the required training program, assessment, and examination. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 15:010 & E. Coverage provisions and requirements regarding behavioral health services provided by individual approved behavioral health practitioners, behavioral health provider groups, and behavioral health multi-specialty groups.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 3 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Section 3 to: (a) establish a new service category of Applied Behavior Analysis (ABA); and (b) add registered behavior technicians to ABA support services and remove them from comprehensive community support services; and (3) to amend Section 4 to clarify terminology used for laboratory services. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 15:015 & E. Reimbursement provisions and requirements for behavioral health services provided by individual approved behavioral health practitioners, behavioral health provider groups or behavioral health multi-specialty groups.

A motion was made and seconded to approve the following amendments: to amend Section 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 15:020 & E. Coverage provisions and requirement regarding services provided by behavioral health services organizations for mental health treatment.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 3 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Section 2 to allow a one-time extension for obtaining accreditation; and (3) to amend Section 3 to: (a) establish a new service category of Applied Behavior Analysis (ABA); (b) add registered behavior technicians to ABA support services and remove them from comprehensive community support services; and (c) clarify when laboratory services will be reimbursable. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 15:022 & E. Coverage provisions and requirements regarding services provided by behavioral health services organizations for substance use disorder treatment and co-occurring disorders.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Section 2 to allow a one-time extension for obtaining accreditation; and (3) to amend Section 3 to: (a) require residential treatment providers to establish a contractual relationship with a narcotic treatment program that dispenses methadone if a recipient's choice of medication assisted treatment is methadone; (b) clarify terminology used for laboratory services; and (c) allow temporarily certified alcohol and drug counselors in narcotic treatment programs to practice for three (3) years instead of two (2). Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 15:025 & E. Reimbursement provisions and requirements regarding behavioral health services provided by behavioral health services organizations.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Department for Community Based Services: Division of Protection and Permanency: Child Welfare**

922 KAR 1:320 & E. Service appeals. Laura Begin, regulation coordinator, and Rachael Ratliff, legislative liaison, represented the division.

**The following administrative regulations were deferred or removed from the November 12, 2019, subcommittee agenda:**

**STATE BOARD OF ELECTIONS: Forms and Procedures**

31 KAR 4:120. Additional and emergency precinct officers.

**BOARDS AND COMMISSIONS: Board of Pharmacy**

201 KAR 2:095. Pharmacist interns.

**Real Estate Appraisers**

201 KAR 30:130. Education provider, instructor, and course.

**TOURISM, ARTS, AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game**

301 KAR 2:185. Hunter education.

**JUSTICE AND PUBLIC SAFETY CABINET: Asset Forfeiture**

500 KAR 9:011. Repeal of 500 KAR 009:010, 500 KAR 009:020, 500 KAR 009:030, and 500 KAR 009:040.

**Motorcycle Safety Education Commission**

500 KAR 15:010 & E. Motorcycle safety education program.

**TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing: Administration**

601 KAR 2:030E. Ignition interlock.

**ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division of Oil and Gas**

805 KAR 1:001. Definitions for 805 KAR Chapter 001.

805 KAR 1:020. Protection of fresh water zones.

805 KAR 1:030. Well location and as-drilled location plat, preparation, form and contents.

805 KAR 1:050. Bonds, requirements, cancellation.

805 KAR 1:060. Plugging wells.

805 KAR 1:080. Gas storage reservoirs; drilling, plugging in vicinity.

805 KAR 1:110. Underground injection control.

805 KAR 1:120. Operating or deepening existing wells and drilling deeper than the permitted depth.

805 KAR 1:140. Directional and horizontal wells.

**Division of Oil and Gas**

805 KAR 1:170. Content of the operations and reclamation plan.

805 KAR 1:180. Production reporting.

805 KAR 1:190. Gathering lines.

805 KAR 1:200. General information associated with oil and gas permits.

**Sanctions and Penalties**

805 KAR 9:011. Repeal of 805 KAR Chapter 009.

**CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Healthcare: Health Services and Facilities**

902 KAR 20:036. Operation and services; personal care homes. Stephanie Brammer – Barnes, regulation coordinator, and Steve Davis, inspector general, represented the division.

In response to a question by Co-Chair Hale, Mr. Davis stated that the division requested to defer consideration of this administrative regulation to the December meeting of the subcommittee. A motion was made and seconded to approve the deferral request. Without objection, and with the agreement of the agency, this administrative regulation was deferred.

**Department for Community Based Services: Child Welfare**

922 KAR 1:330 & E. Child protective services.

**The subcommittee adjourned at 11:50 a.m. The next meeting of the subcommittee is tentatively scheduled for December 16, 2019, at 1 p.m.**

## 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.

# CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 46th year of the *Administrative Register of Kentucky*, from July 2019 through June 2020.


**Locator Index - Effective Dates** **F - 2**

The Locator Index lists all administrative regulations published 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 under REGISTER YEAR 45 are regulations that were originally published in last year's issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *Register* year ended.

**KRS Index** **F - 13**

A cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each regulation submitted for publication during this *Register* year.

**Certifications Index** **F - 25**

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year. Additionally, this index includes information regarding regulations that had letters that stated a regulation shall be amended within 18 months.

**Technical Amendment Index** **F- 30**

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** **F - 31**

A general index of administrative regulations published during this *Register* year, and is mainly broken down by agency.

# LOCATOR INDEX - EFFECTIVE DATES

| Regulation Number | 45 Ky.R. Page No. | Effective Date |
|---|---|---|

**REGISTER YEAR 45**

The administrative regulations listed under VOLUME 44 are those administrative regulations that were originally published in Volume 44 (last year's) issues of the Administrative Register of Kentucky but had not yet gone into effect when the 2018 Kentucky Administrative Regulations Service was published.

**SYMBOL KEY:**

* Statement of Consideration not filed by deadline
** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
*** Withdrawn before being printed in Register
IJC Interim Joint Committee
*(r)* Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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**EMERGENCY ADMINISTRATIVE REGULATIONS:**

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

| | | |
|---|---|---|
| 9 KAR 1:010E | 3382 | 5-15-2019 |
| Replaced | 405 | 9-6-2019 |
| 9 KAR 1:040E | 3383 | 5-15-2019 |
| Replaced | 405 | 9-6-2019 |
| 200 KAR 3:020E | 2304 | 1-4-2019 |
| Replaced | 28 | 8-2-2019 |
| 500 KAR 15:010E | 3011 | 4-5-2019 |
| 601 KAR 2:030E | 2310 | 1-8-2019 |
| Withdrawn | | 8-7-2019 |
| 803 KAR 025:270E | 2316 | 12-27-2018 |
| Withdrawn | | 7-2019 |
| 907 KAR 1:604E | 3015 | 3-15-2019 |
| Replaced | 937 | 10-4-2019 |
| 921 KAR 2:015E | 2322 | 12-28-2018 |
| Replaced | 3232 | 7-5-2019 |
| 921 KAR 2:055E | 1501 | 11-1-2018 |
| Replaced | 2925 | 5-31-2019 |
| 922 KAR 1:310E | 3019 | 4-1-2019 |
| Replaced | 521 | 9-9-2019 |
| 922 KAR 1:350E | 3033 | 4-1-2019 |
| Replaced | 535 | 9-9-2019 |
| 922 KAR 1:495E | 3042 | 4-1-2019 |
| Replaced | 944 | 9-9-2019 |

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**ORDINARY ADMINISTRATIVE REGULATIONS:**

| | | |
|---|---|---|
| 009 KAR 001:010 | | |
| Amended | 3439 | |
| 009 KAR 001:040 | | |
| Amended | 3440 | |
| 011 KAR 005:145 | | |
| Amended | 3239 | 8-2-2019 |
| 016 KAR 003:010 | | |
| Repealed | 2801 | 7-5-2019 |
| 016 KAR 003:011*(r)* | 2801 | |
| As Amended | 3387 | 7-5-2019 |
| 016 KAR 003:020 | | |
| Repealed | 2801 | 7-5-2019 |
| 016 KAR 003:030 | | |
| Repealed | 2801 | 7-5-2019 |
| 016 KAR 003:040 | | |
| Repealed | 2801 | 7-5-2019 |
| 016 KAR 003:050 | | |
| Repealed | 2801 | 7-5-2019 |
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SYMBOL KEY:

* Statement of Consideration not filed by deadline

** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))

*** Withdrawn before being printed in Register

IJC Interim Joint Committee

(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

## REGISTER YEAR 46

**SYMBOL KEY:**
* Statement of Consideration not filed by deadline
** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
*** Withdrawn before being printed in Register
IJC Interim Joint Committee
*(r)* Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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**EMERGENCY ADMINISTRATIVE REGULATIONS**

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**SYMBOL KEY:**

* Statement of Consideration not filed by deadline

** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))

*** Withdrawn before being printed in Register

IJC Interim Joint Committee

*(r)* Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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| | 202 KAR 006:080 |
| | 202 KAR 006:090 |
| 12 U.S.C. | 201 KAR 030:010 |
| | 201 KAR 030:040 |
| | 201 KAR 030:110 |
| | 201 KAR 030:130 |
| | 201 KAR 030:190 |
| 15 U.S.C. | 201 KAR 030:330 |
| | 806 KAR 003:230 |
| 16 U.S.C. | 405 KAR 008:010 |
| | 405 KAR 008:030 |
| 18 U.S.C. | 501 KAR 006:160 |
| | 601 KAR 002:030E |
| 20 U.S.C. | 013 KAR 001:020 |
| | 702 KAR 007:065 |
| | 703 KAR 005:280 |
| | 902 KAR 020:430 |
| | 907 KAR 015:010 |
| | 907 KAR 015:020 |
| | 922 KAR 002:100 |
| 21 U.S.C. | 902 KAR 045:090 |
| 26 U.S.C. | 102 KAR 001:032 |
| | 105 KAR 001:149 |
| | 105 KAR 001:390 |
| | 301 KAR 003:100 |
| | 907 KAR 005:005 |
| 29 U.S.C. | 101 KAR 002:102 |
| | 101 KAR 003:015 |
| | 201 KAR 015:110 |
| | 902 KAR 008:040 |
| | 902 KAR 008:120 |
| | 902 KAR 020:430 |
| | 907 KAR 005:005 |
| | 907 KAR 015:005 |
| | 907 KAR 015:010 |
| | 907 KAR 015:020 |
| | 920 KAR 001:070 |
| 30 U.S.C. | 400 KAR 001:110 |
| | 401 KAR 010:030 |
| | 405 KAR 008:010 |
| | 405 KAR 008:030 |
| | 405 KAR 010:050 |
| | 405 KAR 016:100 |
| | 405 KAR 016:210 |
| | 405 KAR 018:100 |
| | 405 KAR 018:220 |
| 31 U.S.C. | 045 KAR 001:050 |
| 33 U.S.C. | 401 KAR 010:029 |
| 38 U.S.C | 902 KAR 008:096 |
| 42 U.S.C. | 201 KAR 008:540 |
| | 202 KAR 006:050 |
| | 401 KAR 051:010 |
| | 401 KAR 052:100 |
| | 401 KAR 063:010 |
| | 805 KAR 001:110 |
| | 815 KAR 020:060 |
| | 900 KAR 002:050 |
| | 902 KAR 020:370 |
| | 902 KAR 020:430 |
| | 902 KAR 020:450 |
| | 902 KAR 021:020 |
| | 907 KAR 005:005 |
| | 907 KAR 010:830 |
| | 907 KAR 010:840 |
| | 907 KAR 015:010 |
| | 907 KAR 015:015 |

| KRS SECTION | REGULATION | KRS SECTION | REGULATION |
|---|---|---|---|
| | 907 KAR 015:020 | | |
| | 907 KAR 015:022 | | |
| | 907 KAR 015:025 | | |
| | 920 KAR 001:070 | | |
| | 922 KAR 001:320 | | |
| | 922 KAR 001:330 | | |
| | 922 KAR 001:565 | | |
| | 922 KAR 002:090 | | |
| | 922 KAR 002:100 | | |
| 47 U.S.C. | 202 KAR 006:010 | | |
| | 202 KAR 006:020 | | |
| | 202 KAR 006:030 | | |
| | 202 KAR 006:050 | | |
| | 202 KAR 006:060 | | |
| | 202 KAR 006:070 | | |
| | 202 KAR 006:080 | | |
| | 202 KAR 006:090 | | |
| | 202 KAR 006:100 | | |
| Pub.L. 104-191 | 920 KAR 001:070 | | |
| Pub.L. 110-325 | 920 KAR 001:070 | | |

## 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" means that an administrative regulation has completed the legislative review process established by KRS 13A.290, 13A.330, and 13A.331.

| Regulation Number | Last 13A Review Effective Date* | Letter Filed Date | Action |
|---|---|---|---|
| 012 KAR 001:120 | 08-24-1994 | 06-06-2019 | To be amended, filing deadline 12-10-20 |
| 012 KAR 001:125 | 08-24-1994 | 06-06-2019 | To be amended, filing deadline 12-10-20 |
| 012 KAR 001:130 | 08-24-1994 | 06-06-2019 | To be amended, filing deadline 12-10-20 |
| 012 KAR 001:160 | 08-24-1994 | 06-06-2019 | To be amended, filing deadline 12-10-20 |
| 012 KAR 001:170 | 08-24-1994 | 06-06-2019 | To be amended, filing deadline 12-10-20 |
| 012 KAR 001:175 | 08-24-1994 | 06-06-2019 | To be amended, filing deadline 12-10-20 |
| 012 KAR 004:080 | 09-28-1994 | 06-06-2019 | To be amended, filing deadline 12-10-20 |
| 012 KAR 004:090 | 09-28-1994 | 06-06-2019 | To be amended, filing deadline 12-10-20 |
| 012 KAR 004:100 | 09-28-1994 | 06-06-2019 | To be amended, filing deadline 12-10-20 |
| 012 KAR 004:110 | 09-28-1994 | 06-06-2019 | To be amended, filing deadline 12-10-20 |
| 012 KAR 004:120 | 11-13-1984 | 06-06-2019 | To be amended, filing deadline 12-10-20 |
| 012 KAR 004:130 | 09-28-1994 | 06-06-2019 | To be amended, filing deadline 12-10-20 |
| 012 KAR 004:140 | 09-28-1994 | 06-06-2019 | To be amended, filing deadline 12-10-20 |
| 012 KAR 004:160 | 09-28-1994 | 06-06-2019 | To be amended, filing deadline 12-10-20 |
| 012 KAR 004:170 | 04-12-2000 | 06-06-2019 | To be amended, filing deadline 12-10-20 |
| 012 KAR 005:010 | 03-19-2001 | 06-06-2019 | To be amended, filing deadline 12-10-20 |
| 012 KAR 005:020 | 03-19-2001 | 06-06-2019 | To be amended, filing deadline 12-10-20 |
| 012 KAR 005:030 | 03-19-2001 | 06-06-2019 | To be amended, filing deadline 12-10-20 |
| 012 KAR 005:040 | 03-19-2001 | 06-06-2019 | To be amended, filing deadline 12-10-20 |
| 012 KAR 005:050 | 03-19-2001 | 06-06-2019 | To be amended, filing deadline 12-10-20 |
| 012 KAR 005:060 | 03-19-2001 | 06-06-2019 | To be amended, filing deadline 12-10-20 |
| 012 KAR 005:070 | 03-19-2001 | 06-06-2019 | To be amended, filing deadline 12-10-20 |
| 020 KAR 001:010 | 09-12-1994 | 06-07-2019 | Remain in Effect without Amendment |
| 020 KAR 001:020 | 10-12-1994 | 06-07-2019 | Remain in Effect without Amendment |
| 020 KAR 001:030 | 10-12-1994 | 06-07-2019 | Remain in Effect without Amendment |
| 020 KAR 001:040 | 03-18-2004 | 06-07-2019 | Remain in Effect without Amendment |
| 020 KAR 001:050 | 10-12-1994 | 06-07-2019 | Remain in Effect without Amendment |
| 020 KAR 001:060 | 10-12-1994 | 06-07-2019 | Remain in Effect without Amendment |
| 020 KAR 001:070 | 11-15-1999 | 06-07-2019 | Remain in Effect without Amendment |
| 020 KAR 001:080 | 10-06-2006 | 06-07-2019 | Remain in Effect without Amendment |
| 020 KAR 001:090 | 03-18-2004 | 06-07-2019 | Remain in Effect without Amendment |
| 020 KAR 001:100 | 03-18-2004 | 06-07-2019 | Remain in Effect without Amendment |
| 032 KAR 001:080 | 01-06-2006 | 09-27-2019 | Remain in Effect without Amendment |
| 032 KAR 001:090 | 03-04-1986 | 09-27-2019 | Remain in Effect without Amendment |
| 032 KAR 001:100 | 01-06-2006 | 09-27-2019 | To be amended, filing deadline 3-27-21. |
| 032 KAR 001:190 | 03-04-2011 | 09-27-2019 | To be amended, filing deadline 3-27-21. |
| 032 KAR 002:020 | 01-04-1993 | 09-27-2019 | Remain in Effect without Amendment |
| 032 KAR 002:030 | 01-04-1993 | 09-27-2019 | Remain in Effect without Amendment |
| 032 KAR 002:040 | 01-04-1993 | 09-27-2019 | Remain in Effect without Amendment |
| 032 KAR 002:050 | 01-19-1999 | 09-27-2019 | Remain in Effect without Amendment |
| 032 KAR 002:060 | 07-12-1993 | 09-27-2019 | Remain in Effect without Amendment |
| 032 KAR 002:070 | 01-06-2006 | 09-27-2019 | Remain in Effect without Amendment |
| 032 KAR 002:080 | 01-04-1993 | 09-27-2019 | Remain in Effect without Amendment |
| 032 KAR 002:100 | 04-07-1993 | 09-27-2019 | Remain in Effect without Amendment |
| 032 KAR 002:110 | 04-07-1993 | 09-27-2019 | Remain in Effect without Amendment |
| 032 KAR 002:130 | 06-03-2011 | 09-27-2019 | Remain in Effect without Amendment |
| 032 KAR 002:170 | 01-06-2006 | 09-27-2019 | Remain in Effect without Amendment |
| 032 KAR 002:180 | 06-02-1994 | 09-27-2019 | Remain in Effect without Amendment |
| 032 KAR 002:190 | 06-02-1994 | 09-27-2019 | Remain in Effect without Amendment |
| 032 KAR 002:200 | 06-02-1994 | 09-27-2019 | Remain in Effect without Amendment |
| 032 KAR 002:210 | 03-19-1999 | 09-27-2019 | Remain in Effect without Amendment |
| 032 KAR 002:220 | 01-06-2006 | 09-27-2019 | Remain in Effect without Amendment |
| 040 KAR 001:010 | 09-24-1974 | 08-23-2019 | Remain in Effect without Amendment |
| 040 KAR 001:020 | 09-24-1974 | 08-23-2019 | Remain in Effect without Amendment |
| 040 KAR 001:030 | 02-08-1995 | 08-23-2019 | Remain in Effect without Amendment |
| 040 KAR 005:010 | 07-05-1996 | 08-23-2019 | Remain in Effect without Amendment |
| 045 KAR 001:060 | 11-12-1992 | 06-10-2019 | Remain in Effect without Amendment |
| 045 KAR 001:080 | 02-08-1995 | 06-10-2019 | Remain in Effect without Amendment |

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|---|---|---|---|
| 102 KAR 001:010 | 03-12-1975 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:030 | 08-31-2007 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:038 | 08-31-2007 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:039 | 03-12-1975 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:045 | 12-01-1976 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:050 | 04-05-1991 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:057 | 08-13-2003 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:060 | 05-06-2016 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:070 | 12-01-2017 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:100 | 08-13-2003 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:105 | 06-05-2009 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:110 | 08-13-2003 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:130 | 04-05-1991 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:140 | 04-05-1991 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:145 | 03-12-1975 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:150 | 03-18-2004 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:155 | 08-06-1980 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:163 | 05-31-2009 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:165 | 11-04-2016 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:168 | 05-31-2019 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:170 | 06-05-2009 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:175 | 05-06-2011 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:178 | 06-03-2011 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:180 | 04-05-1991 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:185 | 08-13-2003 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:195 | 04-05-1991 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:210 | 04-05-1991 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:220 | 01-23-2004 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:225 | 02-01-2013 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:230 | 05-03-2013 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:240 | 06-05-2009 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:245 | 03-01-2011 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:250 | 05-16-2002 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:270 | 07-07-2014 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:280 | 02-03-2003 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:290 | 11-04-2016 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:300 | 04-03-2009 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:310 | 03-08-2013 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:320 | 05-31-2019 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:330 | 11-08-2010 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:340 | 03-08-2013 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 001:350 | 05-31-2013 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 002:010 | 12-01-1976 | 07-03-2019 | Remain in Effect without Amendment |
| 102 KAR 002:025 | 06-02-1976 | 07-03-2019 | Remain in Effect without Amendment |
| 103 KAR 001:070 | 02-03-2006 | 06-07-2019 | Remain in Effect without Amendment |
| 103 KAR 001:092 | 02-02-2007 | 06-07-2019 | Remain in Effect without Amendment |
| 103 KAR 001:150 | 01-05-2009 | 06-07-2019 | Remain in Effect without Amendment |
| 103 KAR 002:020 | 05-04-2007 | 06-07-2019 | Remain in Effect without Amendment |
| 103 KAR 005:180 | 05-07-2010 | 06-07-2019 | Remain in Effect without Amendment |
| 103 KAR 005:190 | 04-02-2010 | 06-07-2019 | Remain in Effect without Amendment |
| 103 KAR 005:220 | 03-08-2013 | 06-07-2019 | Remain in Effect without Amendment |
| 103 KAR 005:230 | 04-06-2018 | 06-07-2019 | Remain in Effect without Amendment |
| 103 KAR 027:030 | 12-11-1974 | 06-07-2019 | Remain in Effect without Amendment |
| 103 KAR 027:040 | 01-08-1975 | 06-07-2019 | Remain in Effect without Amendment |
| 103 KAR 027:130 | 04-03-2009 | 09-04-2019 | Remain in Effect without Amendment |
| 103 KAR 027:240 | 05-04-2007 | 06-07-2019 | Remain in Effect without Amendment |
| 103 KAR 028:020 | 01-08-1975 | 06-07-2019 | Remain in Effect without Amendment |
| 103 KAR 028:030 | 05-04-2007 | 11-06-2019 | Remain in Effect without Amendment |
| 103 KAR 028:051 | 02-02-2018 | 06-07-2019 | Remain in Effect without Amendment |
| 103 KAR 028:130 | 01-08-1975 | 06-07-2019 | Remain in Effect without Amendment |
| 103 KAR 030:160 | 01-08-1975 | 06-07-2019 | Remain in Effect without Amendment |
| 103 KAR 030:235 | 02-02-2018 | 06-07-2019 | Remain in Effect without Amendment |
| 103 KAR 030:280 | 05-04-2007 | 06-07-2019 | Remain in Effect without Amendment |
| 103 KAR 031:011 | 11-21-1990 | 06-07-2019 | Remain in Effect without Amendment |
| 103 KAR 031:050 | 01-05-2018 | 06-07-2019 | Remain in Effect without Amendment |
| 103 KAR 031:102 | 02-02-2018 | 06-07-2019 | Remain in Effect without Amendment |
| 103 KAR 031:170 | 02-02-2018 | 06-07-2019 | Remain in Effect without Amendment |
| 103 KAR 031:190 | 01-05-2018 | 06-07-2019 | Remain in Effect without Amendment |
| 103 KAR 040:035 | 10-06-1982 | 08-05-2019 | Remain in Effect without Amendment |

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|---|---|---|---|
| 103 KAR 040:100 | 05-04-1983 | 08-09-2019 | Remain in Effect without Amendment |
| 103 KAR 041:090 | 05-14-1975 | 08-05-2019 | Remain in Effect without Amendment |
| 103 KAR 041:130 | 02-05-1975 | 08-06-2019 | Remain in Effect without Amendment |
| 103 KAR 041:140 | 05-04-2007 | 08-05-2019 | Remain in Effect without Amendment |
| 103 KAR 041:150 | 05-04-2007 | 09-04-2019 | Remain in Effect without Amendment |
| 103 KAR 041:160 | 05-04-2007 | 08-05-2019 | Remain in Effect without Amendment |
| 103 KAR 043:320 | 05-04-2007 | 08-07-2019 | Remain in Effect without Amendment |
| 103 KAR 043:330 | 08-01-2014 | 08-07-2019 | Remain in Effect without Amendment |
| 103 KAR 044:070 | 01-05-2018 | 08-07-2019 | Remain in Effect without Amendment |
| 103 KAR 044:090 | 05-04-2007 | 08-07-2019 | Remain in Effect without Amendment |
| 103 KAR 044:100 | 01-05-2018 | 08-07-2019 | Remain in Effect without Amendment |
| 103 KAR 044:120 | 01-05-2018 | 08-07-2019 | Remain in Effect without Amendment |
| 103 KAR 045:015 | 05-04-2007 | 08-07-2019 | Remain in Effect without Amendment |
| 105 KAR 001:130 | 07-29-2009 | 06-28-2019 | Remain in Effect without Amendment |
| 105 KAR 001:150 | 07-17-2003 | 06-28-2019 | Remain in Effect without Amendment |
| 105 KAR 001:160 | 10-03-2008 | 06-28-2019 | Remain in Effect without Amendment |
| 105 KAR 001:170 | 10-03-2008 | 06-28-2019 | Remain in Effect without Amendment |
| 105 KAR 001:190 | 09-28-2011 | 06-11-2019 | Remain in Effect without Amendment |
| 105 KAR 001:220 | 10-03-2008 | 06-11-2019 | Remain in Effect without Amendment |
| 105 KAR 001:260 | 12-21-2000 | 06-11-2019 | Remain in Effect without Amendment |
| 105 KAR 001:400 | 10-24-2012 | 06-11-2019 | Remain in Effect without Amendment |
| 105 KAR 001:430 | 10-24-2012 | 06-28-2019 | Remain in Effect without Amendment |
| 105 KAR 001:440 | 01-06-2012 | 06-11-2019 | Remain in Effect without Amendment |
| 201 KAR 008:540 | 02-01-2013 | 04-18-2019 | To be amended. Amendment filed 06-14-19. |
| 201 KAR 008:550 | 09-05-2014 | 07-29-2019 | To be amended, filing deadline 1-29-21. |
| 201 KAR 008:581 | 05-06-2011 | 04-08-2019 | To be amended. Amendment filed 04-15-19, eff. 9-9-2019 |
| 201 KAR 023:020 | 03-04-2011 | 06-21-2019 | Remain in Effect without Amendment |
| 201 KAR 023:050 | 12-07-2011 | 06-21-2019 | To be amended, filing deadline 12-21-20 |
| 201 KAR 023:060 | 10-13-1997 | 06-21-2019 | Remain in Effect without Amendment |
| 201 KAR 023:080 | 09-11-2000 | 06-21-2019 | Remain in Effect without Amendment |
| 201 KAR 023:120 | 01-04-1986 | 06-21-2019 | Remain in Effect without Amendment |
| 201 KAR 023:140 | 10-13-1997 | 06-21-2019 | Remain in Effect without Amendment |
| 201 KAR 026:115 | 03-04-2011 | 09-05-2019 | To be amended, filing deadline 3-5-21 |
| 201 KAR 026:121 | 12-16-2015 | 09-05-2019 | Remain in Effect without Amendment |
| 201 KAR 026:125 | 07-17-2017 | 09-05-2019 | Remain in Effect without Amendment |
| 201 KAR 026:130 | 01-23-2019 | 09-05-2019 | Remain in Effect without Amendment |
| 201 KAR 026:140 | 01-23-2019 | 09-05-2019 | Remain in Effect without Amendment |
| 201 KAR 026:145 | 07-17-2017 | 09-05-2019 | Remain in Effect without Amendment |
| 201 KAR 026:155 | 07-17-2017 | 09-05-2019 | Remain in Effect without Amendment |
| 201 KAR 026:160 | 07-17-2017 | 09-05-2019 | Remain in Effect without Amendment |
| 201 KAR 026:165 | 07-17-2017 | 09-05-2019 | Remain in Effect without Amendment |
| 201 KAR 026:171 | 01-23-2019 | 09-05-2019 | Remain in Effect without Amendment |
| 201 KAR 026:175 | 01-23-2019 | 09-05-2019 | Remain in Effect without Amendment |
| 201 KAR 026:180 | 07-17-2017 | 09-05-2019 | Remain in Effect without Amendment |
| 201 KAR 026:185 | 07-17-2017 | 09-05-2019 | Remain in Effect without Amendment |
| 201 KAR 026:190 | 07-17-2017 | 09-05-2019 | To be amended, filing deadline 3-5-21 |
| 201 KAR 026:200 | 01-23-2019 | 09-05-2019 | To be amended, filing deadline 3-5-21 |
| 201 KAR 026:215 | 07-17-2017 | 09-05-2019 | Remain in Effect without Amendment |
| 201 KAR 026:225 | 07-17-2017 | 09-05-2019 | Remain in Effect without Amendment |
| 201 KAR 026:230 | 03-04-2011 | 09-05-2019 | To be amended, filing deadline 3-5-21 |
| 201 KAR 026:250 | 07-17-2017 | 09-05-2019 | To be amended, filing deadline 3-5-21 |
| 201 KAR 026:270 | 03-04-2011 | 09-05-2019 | Remain in Effect without Amendment |
| 201 KAR 026:280 | 01-23-2019 | 09-05-2019 | Remain in Effect without Amendment |
| 201 KAR 026:290 | 07-17-2017 | 09-05-2019 | Remain in Effect without Amendment |
| 201 KAR 026:300 | 02-07-2002 | 09-05-2019 | To be amended, filing deadline 3-5-21 |
| 201 KAR 026:310 | 03-04-2011 | 09-05-2019 | To be amended, filing deadline 3-5-21 |
| 201 KAR 030:130 | 06-16-2003 | 08-06-2019 | Remain in Effect without Amendment |
| 201 KAR 030:160 | 08-25-2005 | 08-06-2019 | Remain in Effect without Amendment |
| 201 KAR 030:170 | 08-25-2005 | 08-06-2019 | Remain in Effect without Amendment |
| 301 KAR 001:010 | 10-07-2010 | 11-08-2019 | Remain in Effect without Amendment |
| 301 KAR 001:035 | 08-06-1980 | 11-08-2019 | Remain in Effect without Amendment |
| 301 KAR 001:058 | 06-01-2012 | 11-08-2019 | Remain in Effect without Amendment |
| 301 KAR 001:060 | 01-04-2005 | 11-08-2019 | Remain in Effect without Amendment |
| 301 KAR 001:080 | 11-13-1974 | 11-08-2019 | Remain in Effect without Amendment |
| 301 KAR 001:110 | 07-12-2006 | 11-08-2019 | Remain in Effect without Amendment |
| 301 KAR 001:171 | 07-14-2004 | 11-08-2019 | Remain in Effect without Amendment |
| 301 KAR 001:180 | 03-04-1986 | 11-08-2019 | Remain in Effect without Amendment |
| 302 KAR 029:070 | 12-19-2001 | 06-27-2019 | Remain in Effect without Amendment |
| 401 KAR 058:005 | 07-07-1998 | 07-30-2018 | To be amended. Amendment filed 06-14-19, effective 6-14- |

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|---|---|---|---|
| | | | 2019. |
| 501 KAR 001:040 | 09-10-2001 | 10-21-2019 | To be amended. Amendment filed 10-21-2019. |
| 601 KAR 001:080 | 05-14-1975 | 09-09-2019 | Remain in Effect without Amendment |
| 601 KAR 001:140 | 11-20-1998 | 09-09-2019 | Remain in Effect without Amendment |
| 601 KAR 001:200 | 08-06-2010 | 09-09-2019 | Remain in Effect without Amendment |
| 601 KAR 009:115 | 06-09-1987 | 09-09-2019 | Remain in Effect without Amendment |
| 601 KAR 009:140 | 02-04-2011 | 09-25-2019 | Remain in Effect without Amendment |
| 601 KAR 014:010 | 11-12-2001 | 11-12-2019 | Remain in Effect without Amendment |
| 702 KAR 003:100 | 01-14-2002 | 06-28-2019 | Remain in Effect without Amendment |
| 702 KAR 003:110 | 11-17-2000 | 06-28-2019 | Remain in Effect without Amendment |
| 702 KAR 003:120 | 11-01-1999 | 06-28-2019 | Remain in Effect without Amendment |
| 702 KAR 003:220 | 11-08-1991 | 06-28-2019 | Remain in Effect without Amendment |
| 702 KAR 005:030 | 01-16-2003 | 06-28-2019 | Remain in Effect without Amendment |
| 702 KAR 005:110 | 01-03-2011 | 06-28-2019 | Remain in Effect without Amendment |
| 702 KAR 006:110 | 10-07-2011 | 06-28-2019 | Remain in Effect without Amendment |
| 703 KAR 005:140 | 07-13-2012 | 06-28-2019 | Remain in Effect without Amendment |
| 705 KAR 002:140 | 11-17-2000 | 06-28-2019 | Remain in Effect without Amendment |
| 707 KAR 001:002 | 12-07-2007 | 06-28-2019 | Remain in Effect without Amendment |
| 707 KAR 001:310 | 11-05-2007 | 06-28-2019 | Remain in Effect without Amendment |
| 707 KAR 001:340 | 11-05-2007 | 06-28-2019 | Remain in Effect without Amendment |
| 770 KAR 001:010 | 02-07-1992 | 06-21-2019 | Remain in Effect without Amendment |
| 770 KAR 001:020 | 02-07-1992 | 06-21-2019 | Remain in Effect without Amendment |
| 770 KAR 001:030 | 02-07-1992 | 06-21-2019 | Remain in Effect without Amendment |
| 770 KAR 001:040 | 02-07-1992 | 06-21-2019 | Remain in Effect without Amendment |
| 770 KAR 001:050 | 02-07-1992 | 06-21-2019 | Remain in Effect without Amendment |
| 770 KAR 001:060 | 02-07-1992 | 06-21-2019 | Remain in Effect without Amendment |
| 770 KAR 001:070 | 10-31-2003 | 06-21-2019 | Remain in Effect without Amendment |
| 772 KAR 001:010 | 09-03-1998 | 07-01-2019 | Remain in Effect without Amendment |
| 772 KAR 001:020 | 09-03-1998 | 07-01-2019 | Remain in Effect without Amendment |
| 772 KAR 001:030 | 09-03-1998 | 07-01-2019 | Remain in Effect without Amendment |
| 772 KAR 001:040 | 09-03-1998 | 07-01-2019 | Remain in Effect without Amendment |
| 772 KAR 001:050 | 09-03-1998 | 07-01-2019 | Remain in Effect without Amendment |
| 772 KAR 001:060 | 09-03-1998 | 07-01-2019 | Remain in Effect without Amendment |
| 772 KAR 001:070 | 09-03-1998 | 07-01-2019 | Remain in Effect without Amendment |
| 780 KAR 002:040 | 05-01-2009 | 06-28-2019 | Remain in Effect without Amendment |
| 780 KAR 002:060 | 05-01-2009 | 06-28-2019 | Remain in Effect without Amendment |
| 780 KAR 002:140 | 05-01-2009 | 06-28-2019 | Remain in Effect without Amendment |
| 780 KAR 003:050 | 05-01-2009 | 06-28-2019 | Remain in Effect without Amendment |
| 780 KAR 003:120 | 05-01-2009 | 06-28-2019 | Remain in Effect without Amendment |
| 780 KAR 003:130 | 05-01-2009 | 06-28-2019 | Remain in Effect without Amendment |
| 780 KAR 003:140 | 05-01-2009 | 06-28-2019 | Remain in Effect without Amendment |
| 780 KAR 007:010 | 05-01-2009 | 06-28-2019 | Remain in Effect without Amendment |
| 803 KAR 025:015 | 03-16-1998 | 08-20-2019 | To be amended, filing deadline 2-20-21 |
| 803 KAR 025:021 | 08-10-2006 | 08-20-2019 | To be amended, filing deadline 2-20-21 |
| 803 KAR 025:220 | 07-17-1997 | 08-20-2019 | To be amended, filing deadline 2-20-21 |
| 804 KAR 007:020 | 05-14-1975 | 03-26-2019 | To be amended. Amendment filed 4-15-19, effective 8-2-2019. |
| 815 KAR 020:071 | 07-29-2009 | 10-14-2019 | Remain in Effect without Amendment |
| 815 KAR 020:072 | 05-03-1991 | 10-14-2019 | Remain in Effect without Amendment |
| 815 KAR 020:073 | 09-16-1999 | 10-14-2019 | Remain in Effect without Amendment |
| 815 KAR 020:074 | 07-29-2009 | 10-14-2019 | Remain in Effect without Amendment |
| 815 KAR 020:078 | 07-13-2007 | 10-14-2019 | Remain in Effect without Amendment |
| 815 KAR 020:110 | 07-06-2007 | 10-14-2019 | Remain in Effect without Amendment |
| 815 KAR 020:150 | 07-06-2007 | 10-14-2019 | To be amended. Amendment filed 10-14-19. |
| 902 KAR 001:400 | 11-20-1996 | 10-15-2019 | Remain in Effect without Amendment |
| 902 KAR 002:030 | 12-11-1974 | 10-18-2019 | Remain in Effect without Amendment |
| 902 KAR 002:040 | 11-29-1989 | 10-18-2019 | Remain in Effect without Amendment |
| 902 KAR 002:050 | 12-11-1974 | 10-18-2019 | Remain in Effect without Amendment |
| 902 KAR 002:065 | 01-15-2003 | 10-18-2019 | To be amended, filing deadline 4-18-21 |
| 902 KAR 002:080 | 08-06-2007 | 10-15-2019 | Remain in Effect without Amendment |
| 902 KAR 002:090 | 01-19-1999 | 10-15-2019 | Remain in Effect without Amendment |
| 902 KAR 004:090 | 01-10-1992 | 10-15-2019 | Remain in Effect without Amendment |
| 902 KAR 008:130 | 08-19-1998 | 06-11-2019 | Remain in Effect without Amendment |
| 902 KAR 008:150 | 10-16-2002 | 06-11-2019 | Remain in Effect without Amendment |
| 902 KAR 008:160 | 08-17-2011 | 06-11-2019 | Remain in Effect without Amendment |
| 902 KAR 010:030 | 08-01-1996 | 10-02-2019 | Remain in Effect without Amendment |
| 902 KAR 010:035 | 11-09-1992 | 10-02-2019 | Remain in Effect without Amendment |
| 902 KAR 010:120 | 08-01-1996 | 10-02-2019 | Remain in Effect without Amendment |
| 902 KAR 010:121 | 03-06-2001 | 10-02-2019 | Remain in Effect without Amendment |

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| 902 KAR 015:020 | 11-10-2011 | 10-18-2019 | Remain in Effect without Amendment |
| 902 KAR 023:010 | 02-02-2007 | 11-05-2019 | Remain in Effect without Amendment |
| 902 KAR 028:010 | 06-01-2012 | 09-11-2019 | Remain in Effect without Amendment |
| 902 KAR 028:020 | 06-01-2012 | 09-11-2019 | Remain in Effect without Amendment |
| 902 KAR 028:030 | 06-01-2012 | 09-11-2019 | Remain in Effect without Amendment |
| 902 KAR 028:040 | 06-01-2012 | 09-11-2019 | Remain in Effect without Amendment |
| 902 KAR 028:050 | 06-01-2012 | 09-11-2019 | Remain in Effect without Amendment |
| 902 KAR 028:060 | 06-01-2012 | 09-11-2019 | Remain in Effect without Amendment |
| 902 KAR 045:020 | 03-02-2006 | 11-05-2019 | Remain in Effect without Amendment |
| 902 KAR 045:080 | 08-01-1996 | 11-05-2019 | Remain in Effect without Amendment |
| 902 KAR 045:100 | 08-01-1996 | 11-05-2019 | Remain in Effect without Amendment |
| 902 KAR 048:010 | 02-07-2002 | 11-05-2019 | Remain in Effect without Amendment |
| 902 KAR 100:015 | 01-10-1992 | 08-16-2019 | Remain in Effect without Amendment |
| 902 KAR 100:021 | 06-03-2011 | 08-16-2019 | Remain in Effect without Amendment |
| 902 KAR 100:040 | 11-16-2011 | 08-16-2019 | Remain in Effect without Amendment |
| 902 KAR 100:041 | 09-11-2000 | 08-16-2019 | Remain in Effect without Amendment |
| 902 KAR 100:045 | 10-16-2000 | 08-16-2019 | Remain in Effect without Amendment |
| 902 KAR 100:050 | 06-27-1990 | 08-16-2019 | Remain in Effect without Amendment |
| 902 KAR 100:065 | 02-01-2001 | 08-16-2019 | Remain in Effect without Amendment |
| 902 KAR 100:105 | 01-10-1992 | 08-16-2019 | Remain in Effect without Amendment |
| 902 KAR 100:110 | 01-10-1992 | 08-16-2019 | Remain in Effect without Amendment |
| 902 KAR 100:115 | 01-10-1992 | 08-16-2019 | Remain in Effect without Amendment |
| 902 KAR 100:120 | 01-10-1992 | 08-16-2019 | Remain in Effect without Amendment |
| 902 KAR 100:125 | 01-10-1992 | 08-16-2019 | Remain in Effect without Amendment |
| 902 KAR 100:130 | 01-10-1992 | 08-16-2019 | Remain in Effect without Amendment |
| 902 KAR 100:136 | 01-10-1992 | 08-16-2019 | Remain in Effect without Amendment |
| 902 KAR 100:137 | 01-10-1992 | 08-16-2019 | Remain in Effect without Amendment |
| 902 KAR 100:140 | 01-10-1992 | 08-16-2019 | Remain in Effect without Amendment |
| 902 KAR 100:145 | 01-10-1992 | 08-16-2019 | Remain in Effect without Amendment |
| 902 KAR 100:150 | 01-10-1992 | 08-16-2019 | Remain in Effect without Amendment |
| 902 KAR 100:155 | 01-10-1992 | 08-16-2019 | Remain in Effect without Amendment |
| 902 KAR 100:160 | 01-10-1992 | 08-16-2019 | Remain in Effect without Amendment |
| 902 KAR 100:165 | 06-03-2011 | 08-16-2019 | Remain in Effect without Amendment |
| 902 KAR 100:170 | 08-01-1996 | 08-16-2019 | Remain in Effect without Amendment |
| 920 KAR 001:030 | 08-07-1984 | 11-12-2019 | To be amended, filing deadline 4-18-21 |

# TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments entered since being published in the *2017 Kentucky Administrative Regulations Service*. 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 *Administrative Register of Kentucky*. NOTE: Copies of the technical amendments are usually posted on the Legislative Research Commission Web site for a short time before they are finalized. Regulations are available for viewing on the Legislative Research Commission Web site at https://legislature.ky.gov/law/kar/pages/default.aspx.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

| Regulation Number | Date Corrected | Regulation Number | Date Corrected |
|---|---|---|---|
| 103 KAR 028:150 | 10-31-2019 | | |
| 103 KAR 030:290 | 10-10-2019 | | |
| 103 KAR 031:180 | 10-10-2019 | | |
| 105 KAR 001:147 | 09-12-2019 | | |
| 106 KAR 001:050† | 09-04-2019 | | |
| 302 KAR 035:060† | 09-04-2019 | | |
| 401 KAR 039:060 | 05-07-2019 | | |
| 401 KAR 039:080 | 05-07-2019 | | |
| 401 KAR 042:020 | 05-07-2019 | | |
| | 09-25-2019 | | |
| 401 KAR 042:060 | 05-07-2019 | | |
| | 09-25-2019 | | |
| 401 KAR 042:250 | 05-07-2019 | | |
| | 09-25-2019 | | |
| 401 KAR 042:330 | 05-07-2019 | | |
| | 09-25-2019 | | |
| 401 KAR 045:040 | 05-07-2019 | | |
| 401 KAR 045:070 | 05-07-2019 | | |
| 401 KAR 045:080 | 05-07-2019 | | |
| 401 KAR 045:090 | 05-07-2019 | | |
| 401 KAR 045:100 | 05-07-2019 | | |
| 401 KAR 045:135 | 05-07-2019 | | |
| 401 KAR 045:135 | 05-07-2019 | | |
| 401 KAR 046:120 | 05-07-2019 | | |
| 401 KAR 047:090 | 05-07-2019 | | |
| 401 KAR 047:095 | 05-07-2019 | | |
| 401 KAR 047:110 | 05-07-2019 | | |
| 401 KAR 047:205 | 05-07-2019 | | |
| 401 KAR 048:090 | 10-03-2019 | | |
| 401 KAR 048:205 | 05-07-2019 | | |
| 401 KAR 045:206 | 05-07-2019 | | |
| 401 KAR 048:207 | 05-07-2019 | | |
| 401 KAR 048:208 | 05-07-2019 | | |
| 401 KAR 048:310 | 05-07-2019 | | |
| | 10-03-2019 | | |
| 401 KAR 049:011 | 05-07-2019 | | |
| 401 KAR 049:080 | 05-07-2019 | | |
| 401 KAR 049:100 | 05-07-2019 | | |
| 401 KAR 050:020† | 09-04-2019 | | |
| 401 KAR 055:010† | 09-04-2019 | | |
| 401 KAR 059:010† | 09-04-2019 | | |
| 401 KAR 059:020† | 09-04-2019 | | |
| 401 KAR 059:021† | 09-04-2019 | | |
| 401 KAR 059:023† | 09-04-2019 | | |
| 401 KAR 061:010† | 09-04-2019 | | |
| 401 KAR 061:011† | 09-04-2019 | | |
| 401 KAR 100:030 | 05-07-2019 | | |
| 401 KAR 101:010 | 05-07-2019 | | |
| 401 KAR 101:020 | 05-07-2019 | | |
| 401 KAR 101:0.30 | 05-07-2019 | | |
| 401 KAR 101:040 | 05-07-2019 | | |
| 401 KAR 102:010 | 05-07-2019 | | |
| 805 KAR 008:060 | 09-09-2019 | | |
| 900 KAR 006:125 | 10-02-2019 | | |
| 902 KAR 050:005‡ | colon, Section 1(3) 09-01-2019 | | |
| 908 KAR 001:370 | 08-18-2019 | | |
| 911 KAR 001:850 | 08-29-2019 | | |

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