

1 GENERAL GOVERNMENT CABINET

2 Board of Licensed Professional Counselors

3 (Amendment)

4 201 KAR 36:072. Reciprocity requirements for applicants licensed or certified in another state.

5 RELATES TO: KRS 335.515(12), KRS 335B.020, KRS 12.245, KRS 12.255, KRS 12.357

6 STATUTORY AUTHORITY: KRS 335.515(1), (3), (12)

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(1) requires the board to
8 evaluate the qualifications of applicants for licensure. KRS 335.515(3) requires the board to
9 promulgate administrative regulations to carry out and enforce the provisions of KRS 335.500 to
10 335.599. KRS 335.515(12) authorizes the board to enter into reciprocal agreements with certified
11 or licensed professional counseling boards. This administrative regulation establishes the reci-
12 procity requirements for certification or licensure of persons licensed or certified in another state.

13 Section 1. (1) The licensing requirements for a licensed professional clinical counselor under
14 KRS 335.525 or 335.527 may be waived if:

15 (a) The board enters into a written reciprocity agreement with the other jurisdiction;

16 (b) The other jurisdiction grants the same privileges to licensees of Kentucky as Kentucky
17 grants to licensees of that other jurisdiction;

18 (c) The board determines that the licensing requirements of the other jurisdiction are substan-
19 tially similar to the requirements of KRS 335.500 to 335.599;

20 (d) The applicant holds an active valid license or certificate in the other jurisdiction;

21 (e) The applicant is in good standing in the other jurisdiction;

1 (f) The applicant has not been disciplined or reprimanded;

2 (g) The applicant:

3 1. Does not have a pending disciplinary action; or

4 2. Is under investigation by any jurisdiction; and

5 (h) The applicant is of good moral character.

6 (2) No person shall be licensed as a licensed professional associate through reciprocity.

7 Section 2. An applicant seeking licensure as a licensed professional clinical counselor shall:

8 (1) Submit an Application for Licensed Professional Clinical Counselor by Reciprocity to the
9 board;

10 (2) Pay the application fee as established in 201 KAR 36:020, Section 1(1);

11 (3) Submit a letter of good standing from each jurisdiction where the person holds a license
12 or certificate; and

13 (4) Submit the results of a background check performed within the last ninety (90) days from
14 the submission date of the application for a criminal background check performed by [~~the Ken-
15 tucky State Police and~~]the Federal Bureau of Investigation (FBI). [~~If an applicant submits an ap-
16 plication for a nationwide criminal background check performed by the FBI and the FBI cannot
17 complete the background check within thirty (30) days of the request, an applicant may submit
18 an Optional Affidavit for Licensure, as incorporated by reference in 201 KAR 36:070, and shall
19 submit the performed nationwide criminal background check within fourteen (14) days of its re-
20 ceipt. If an applicant has a felony conviction during the applicant's lifetime, a misdemeanor con-
21 viction within the past five (5) years, or a pending charge, the applicant shall not use the Option-
22 al Affidavit for Licensure.]Any cases officially expunged do not have to be disclosed by the ap-
23 plicant and shall not be considered by the board as a conviction for the purposes of this subsec-~~

1 tion. [~~If an applicant does not receive the criminal background check within 180 days of the issu-~~
2 ~~ance of a license, the applicant shall notify the board immediately in writing.~~]

3 Section 3. An applicant granted a license under this administrative regulation shall comply
4 with the continuing education requirements under 201 KAR 36:030 and the renewal require-
5 ments of 201 KAR 36:075.

6 Section 4.

7 (1) The board, by majority vote and during a board meeting, shall determine if the licensing
8 requirements of another jurisdiction are substantially similar to the requirements of KRS 335.500
9 to 335.599.

10 (2) The board may only approve a reciprocity agreement with another jurisdiction if Section
11 1(a), (b), and (c) of this administrative regulation are satisfied.

12 (3) The board shall publish the determination and approval of a reciprocity agreement in its
13 board minutes.

14 Section (~~[5]~~6). Incorporation by Reference. (1) "Application for Licensed Professional Clini-
15 cal Counselor by Reciprocity", DPL-LPC-06, July 2023~~[November 2017]~~, is incorporated by
16 reference.

17 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law,
18 at the Board of Licensed Professional Counselors~~[Division of Occupations and Professions]~~, 500
19 Mero Street~~[911 Leawood Drive]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to
20 4:00~~[4:30]~~ p.m. This material is also available on the board's website at lpc.@ky.gov.

201 KAR 36:072

APPROVED BY AGENCY:

Dr. Hannah Coyt
Chair, Board of Licensed Professional Counselors

Date: _____

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall, if requested, be held on November 28, 2023 at 1:00 PM EST in Room 127CW, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Members of the public may also utilize the following link to attend the meeting by video conference:

Topic: LPC Regulation Public Hearing
Time: Nov 28, 2023 01:00 PM Eastern Time

Join from PC, Mac, Linux, iOS or Android:
<https://us06web.zoom.us/j/87588899726?pwd=ME5WeXp6dk9xRXJmMnl1K0ZDd3M5dz09>
Password: 186265

Or Telephone:
Dial:
USA 713 353 0212
USA 8888227517 (US Toll Free)
Conference code: 387980

Individuals interested in attending this hearing shall notify this agency in writing no later than five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 pm on November 30, 2023.

Written notification of intent to attend the public hearing or written comments on the proposed administrative regulation should be made by using the Public Protection Cabinet website at the follow address: https://ppc.ky.gov/reg_comment.aspx. 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: Sara Boswell Janes
Title: Staff Attorney III
Agency: Department of Professional Licensing, Office of Legal Services
Address: 500 Mero Street, 2 NC WK#2
Phone Number: (502) 782-2709 (office)
Fax: (502) 564-4818
Email: Sara.Janes@ky.gov
Link to public comment portal: https://ppc.ky.gov/reg_comment.aspx

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 201 KAR 36:072

Contact Person: Sara Boswell Janes
Phone Number: (502) 782-2709 (office)
Email: sara.janes@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reciprocity requirements for applicants licensed or certified in another state as a licensed clinical professional counselor or its equivalent.

(b) The necessity of this administrative regulation: This administrative regulation enables the board to issue a license to an applicant if there is a reciprocity agreement with the jurisdiction where the licensee holds a license or certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The amendment is in conformity with the Board's delegated authority

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the reciprocity requirements for applicants licensed or certified in another state.

(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 requires use of the online portal for reciprocity application, with exceptions, strikes the requirement for a KSP background check and requires only the FBI background check; and updates the MIR.

(b) The necessity of the amendment to this administrative regulation: Requiring the use of the only portal for the application for reciprocity, with exceptions, streamlines the administrative process reduces the delay in application processing; the FBI records check provides a complete criminal history without delay and reduces the cost to the applicant for unnecessary record retrieval; and updates the MIR.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms with KRS 335.527 relating to licensing reciprocity requirements and KRS 335.515 authorizing the board's authority to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 335.500 to 225.599.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the board applying the statutes and regulations to streamline the process for the application for reciprocity and for complete criminal history information to protect the public.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 2692 licensed professional clinical counselors and 1325 licensed professional clinical counselor associates. The board reviews 800 – 1000 applications for licensure annually, which include applications for licensure by reciprocity or endorsement. The board does not have statistics on the number of licensees or applicants there are with reciprocity.

(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: An applicant seeking licensure through reciprocity must complete the appropriate application through the online portal, along with the required documents.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no new cost associated to the amendments. It is estimated to cost between \$150 to \$250 dollar to obtain all necessary documents for licensure.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit will be that it will provide more competent mental health professionals in Kentucky and reduce the amount of documentation needed to obtain licensure. A further benefit will be a reduction of paper applications which will improve the efficiency and timeline of the review process. The online application process was implemented in 2018 yet some people still submit paper applications. These take much longer to process and the delay creates multiple inquiries by applicant the delay, thereby increasing the cost for administration.

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

(a) Initially: No new costs will be incurred by the changes

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(9) TIERING: Is tiering applied? (Explain why or why not): This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE

Regulation No. 201 KAR 36:072

Contact Person: Sara Boswell Janes
Phone Number: (502) 782-2709 (office)
Email: sara.janes@ky.gov

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 Board of Licensed Professional Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515(1), (3), (12).

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, fires, 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? There are no additional costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Minimal. A reduced cost of \$20 for the KSP background check will be a savings in the year of application.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None unless the license expires and an application for reinstatement must be made which also requires a criminal history.

(c) How much will it cost the regulated entities for the first year? The cost of the FBI background check and fingerprinting fee which is not a change in cost already required.

(d) How much will it cost the regulated entities for subsequent years? Nothing unless the license expires or becomes inactive and reinstatement is required.

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

Cost Savings (+/-): \$20

Expenditures (+/-):

Other Explanation: The current cost for FBI background check and fingerprinting fee. Therefore, with the amendment the applicant's costs are reduced by \$20 due to elimination of the KSP background check.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)].

This administrative regulation will not have a major economic impact.

SUMMARY OF MATERIALS INCORPORATED BY REFERENCE

201 KAR 36:072

"Application for Licensed Professional Clinical Counselor by Reciprocity", November 2017, is the form designed for submission by an applicant for licensure by reciprocity or endorsement, is incorporated by reference.

SUMMARY OF CHANGES TO MATERIALS INCORPORATED BY REFERENCE

201 KAR 36:072

The "Application for Licensed Professional Clinical Counselor by Reciprocity", DPL-LPC-07, July 2023, has been updated for format. This is an online form incorporated by reference. There are no substantial changes to the content.