

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the March Meeting

March 12, 2018

Call to Order and Roll Call

The March meeting of the Administrative Regulation Review Subcommittee was held on Monday, March 12, 2018, at 1:00 PM, in Room 149 of the Capitol Annex. Senator Ernie Harris, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Ernie Harris, Co-Chair; Representative David Hale, Co-Chair; Senators Perry B. Clark and Alice Forgy Kerr; Representatives Mary Lou Marzian.

Guests: Brent Gregory, Lisa Swiger, Department of Revenue; Leanne Diakov, Board of Medical Licensure; Angela Evans, Board of Emergency Medical Services; Amber Arnett, Ron Brooks, Gabe Jenkins, Karen Waldrop, Department for Fish and Wildlife Resources; Aaron Keatley, Department for Environmental Protection; Anthony Cotto, Department of Insurance; John Lyons, John Parks, Public Service Commission; Stephanie Brammer Barnes, Steve Davis, Office Inspector General; Donna Little, Ann Tyler Morgan, Catherine York, Department for Medicaid Services.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Klaber.

The Administrative Regulation Review Subcommittee met on Monday, March 12, 2018, and submits this report:

Administrative Regulations Reviewed by the subcommittee:

FINANCE AND ADMINISTRATION CABINET: Department of Revenue:
General Administration

103 KAR 1:010. Protests and appeals. Brent Gregory, executive director, Office of Property Valuation, and Lisa Swiger, tax policy consultant and regulations administrator, represented the department.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1 through 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.

GENERAL GOVERNMENT: Board of Medical Licensure

201 KAR 9:310. Continuing medical education. Leanne Diakov, general counsel, represented the board.

COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Board of Emergency Medical Services

202 KAR 7:501. Ambulance agency licensure. Angela Evans, general counsel, and Chuck O'Neal, deputy director, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 through 5, 7, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 7:545. License classifications.

In response to questions by Co-Chair Harris, Mr. O'Neal stated that this administrative regulation prohibited an EMS agency from holding more than one (1) license per level of classification in one (1) geographic service area because a ground ambulance service with a defined geographic service area only needed one (1) license. The board previously had problems with agencies obtaining multiple licenses to sell to competitors, to stall local government processes, or for the purposes of avoiding disciplinary repercussions. An agency with more than one (1) license number for the same level of classification in one (1) geographic service area could use the second license number to avoid disciplinary measures placed on the other license. An agency could also use the second license to circumvent licensure revocation as a disciplinary penalty. Licenses were determined based on geographic service area through the certificate of need process.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency the amendments were approved.

202 KAR 7:550. Required equipment and vehicle standards.

In response to questions by Co-Chair Harris, Mr. O’Neal stated that Class I emergency vehicles were usually for emergency and nonemergency services within a geographic service area. Class III emergency vehicles were usually for specialty care transport between medical facilities. The different classes of emergency vehicles did not always carry the same equipment because some equipment was only for specialty care transport. Class III emergency vehicles were emergency and nonemergency vehicles but were only used for transport between medical facilities.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4, 6, 9, 10, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 7:555. Ground agencies.

In response to questions by Co-Chair Harris, Mr. O’Neal stated that the requirement that a ground agency respond within ten (10) minutes meant that the vehicle was fully ready and had begun the response, not that the vehicle had to be at the destination by that time limit. Prior authorization was usually not needed for emergency services between geographic service areas. Prior authorization was sometimes required for nonemergency transport between medical facilities between geographic service areas. That authorization was usually facilitated within seconds or minutes.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 7:560. Ground vehicle staff.

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; and (2) to amend Section 1(7)(c)4. to add a registered nurse to the list of licensed health professionals authorized to serve as an “additional attendant” in a Class III Neonatal Specialty Care Ambulance. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 7:565. Clinical pilot programs.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Fish

301 KAR 1:015. Boat and motor restrictions. Amber Arnett, counsel; Ron Brooks, fisheries director; Gabe Jenkins, elk program manager; and Karen Waldrop, deputy commissioner represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Game

301 KAR 2:132. Elk hunting seasons, permits, zones, and requirements.

In response to questions by Co-Chair Hale, Ms. Waldrop stated that a person drawn for an elk quota hunt shall be ineligible to be drawn for any elk quota hunt for the following three (3) years thereafter, regardless of the sex of elk for which the person was drawn. Requirements regarding taking an antlerless elk with a crossbow were not changed as part of this amendment.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Public Water Supply

401 KAR 8:510. Disinfectant residuals, disinfection by-products, and disinfection by-product precursors. Aaron Keatley, commissioner, represented the division.

PUBLIC PROTECTION CABINET: Department of Insurance: Commissioner's Office: Insurance Contract

806 KAR 14:006. Property and casualty insurance form filings. Anthony Cotto, executive advisor, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to add procedures for filing electronically; and (2) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and

Sections 1 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Casualty Insurance Contracts

806 KAR 20:010. Declination, cancellation, and nonrenewal of property and casualty insurance.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1(2) to no longer require an insurer to give the specific reason for declination of a policy pursuant to KRS 304.20-040 relating to automobile liability insurance policies; and (2) to amend the TITLE; the RELATES TO and STATUTORY AUTHORITY paragraphs; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 20:021. Repeal of 806 KAR 20:020.

ENERGY AND ENVIRONMENT CABINET: Public Service Commission: Utilities

807 KAR 5:027. Gas pipeline safety; reports of leaks; drug testing. John Lyons, deputy executive director, and John Parks, staff attorney, represented the commission.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph 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.

807 KAR 5:081. Repeal of 807 KAR 5:023 & 807 KAR 5:031.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Office of Inspector General: Division of Healthcare: Health Services and Facilities

902 KAR 20:058. Operation and services; primary care center. Stephanie Brammer-Barnes, regulation coordinator, and Steve Davis, inspector general, represented the division.

In response to questions by Co-Chair Harris, Mr. Davis stated that the cabinet was unaware of any negative impact that could result from physicians not having hospital privileges. Providers were in support of the change. Ms. Brammer-Barnes stated that this administrative regulation was amended upon request by the Primary Care Association's

Technical Advisory Committee. The changes in visitation provisions were for conformity with federal standards.

902 KAR 20:145. Operations and services; rural health clinics.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid Services: Managed Care

907 KAR 17:005. Definitions for 907 KAR Chapter 17. Donna Little, deputy executive director; Anne-Tyler Morgan, deputy commissioner; and Catherine York, deputy general counsel, represented the department.

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.

907 KAR 17:010. Managed care organization requirements and policies relating to enrollees.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 2, 4 through 6, 9, 11, and 13 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 17:015. Managed care organization requirements and policies relating to providers.

907 KAR 17:026. Repeal of 907 KAR 17:026 and 907 KAR 17:030.

907 KAR 17:035. External independent third-party.

Ms. Little stated that the agency amendment to this administrative regulation included provisions established in the budget bill, 2016 through current, and in the House version of the budget. Because the provisions were not budgetary, they were moved into this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; (2) to add a new Section 6(1) to specify that an appeal from a denial of service shall, upon request of the recipient,

include a review by a board-eligible or board-certified physician in the appropriate specialty or subspecialty area; (3) to add a new Section 6(2) to specify that a denial of a health care service rendered by a chiropractor or optometrist shall be made respectively by a chiropractor or optometrist duly licensed in Kentucky; and (4) to add a new Section 6(3) to require use of a reviewer who did not participate in the initial review and denial of service and was not the provider of the service at issue. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred or removed from the March 12, 2018, subcommittee agenda:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: Teaching Certificates

16 KAR 2:010. Kentucky Professional and Provisional Teacher Certificates.

Administrative Certificates

16 KAR 5:030. Proficiency evaluation.

GENERAL GOVERNMENT: Board of Podiatry

201 KAR 25:090. Prescribing and dispensing controlled substances.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures.

Capital Punishment

501 KAR 16:290. Preliminary and post-execution procedures concerning condemned person.

501 KAR 16:300. Execution procedures concerning attorneys representing the condemned, witnesses, visitors, and demonstrators.

501 KAR 16:310. Pre-execution medical actions.

501 KAR 16:330. Lethal injection protocols.

501 KAR 16:340. Electrocution protocol.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing: Administration

601 KAR 2:030 & E. Ignition interlock.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Quotas

804 KAR 9:051. Repeal of 804 KAR 9:010, 804 KAR 9:040, and 804 KAR 9:050.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Office of Inspector General: Division of Healthcare: Health Services and Facilities

902 KAR 20:016. Hospitals; operations and services.

Department for Medicaid Services: Managed Care

907 KAR 17:020. Managed care organization service and service coverage requirements and policies.

Department for Community Based Services: Division of Family Support: K-TAP, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2:015 & E. Supplemental programs for persons who are aged, blind, or have a disability.

Department for Community Based Services: Division of Child Care: Daycare

922 KAR 2:280 & E. Background checks for child care staff members, reporting requirements, and appeals.

The subcommittee adjourned at 1:30 p.m. The next meeting of the subcommittee is tentatively scheduled for April 12, 2018, at 1 p.m.