

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the April Meeting

April 12, 2018

Call to Order and Roll Call

The April meeting of the Administrative Regulation Review Subcommittee was held on Thursday, April 12, 2018, at 1:00 PM, in Room 149 of the Capitol Annex. Representative David Hale, 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; Senator Forgy Kerr; Representatives Jason Petrie and Tommy Turner.

Guests: Margaret Walton, State Board of Elections; Anthony Cotto, Patrick Flannery, Mitch Mattingly, Claims Commission; Morgan Ransdell, Board of Nursing; Lora Arnold Parks, Board of Dieticians and Nutritionists, Matt James, Board of Licensed Diabetes Educators; Amber Arnett, Steve Beam, Karen Waldrop, Department of Fish and Wildlife Resources; Clint Quarles, Department of Agriculture; Amy Barker, Department of Corrections; David Couch, Amy Peabody, Department of Education; Molly Lewis, Office of Health Policy; Matt Kleinert, Donna Little, Department for Medicaid Services; Christa Bell, Elizabeth Caywood, Department for Community Based Services and David McMahan, National Background Check Program.

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

KENTUCKY STATE BOARD OF ELECTIONS: Statewide Voter Registration

31 KAR 3:010 & E. Current address of Kentucky registered voters and distribution of voter registration lists. Margaret Walton, counsel, represented the board.

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

PUBLIC PROTECTION CABINET: Kentucky Claims Commission: Claims and Awards

107 KAR 1:011. Repeal of 107 KAR 1:005, 107 KAR 1:010, 107 KAR 1:015, 107 KAR 1:025, 107 KAR 1:030, and 107 KAR 1:040. Anthony Cotto, executive advisor; Patrick Flannery, interim executive director; and Mitch Mattingly, staff attorney, represented the commission.

Sexual Assault Examination Program

107 KAR 2:011. Repeal of 107 KAR 2:010.

In response to questions by Co-Chair Harris, Mr. Mattingly stated that funding for the program came from the General Fund and a federal fund. The program representatives were unaware of the current status of the sexual assault kit analysis backlog.

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

Board of Claims: Practice and Procedure

108 KAR 1:011. Repeal of 108 KAR 1:010, 108 KAR 1:030, and 108 KAR 1:040.

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

GENERAL GOVERNMENT CABINET: Board of Nursing

201 KAR 20:501. Repeal of 201 KAR 20:500. Morgan Ransdell, staff attorney supervisor, represented the board.

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

201 KAR 20:506. Nurse licensure compact.

In response to questions by Co-Chair Harris, Mr. Ransdell stated that Kentucky had been a party to the Nurse Licensure Compact for over eight (8) years. Due to insufficient growth, a new compact with stronger qualification requirements was promulgated. The new compact was successful in bringing new states into the compact. West Virginia was a

new member of the compact, while Tennessee was a long-standing member. Indiana was considering joining the compact; however, Ohio was not considering joining.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; Sections 1 through 14; 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.

Board of Licensure and Certification for Dietitians and Nutritionists

201 KAR 33:070. Telehealth and telepractice. Matt James, assistant attorney general, and Lora Parks, chair, represented the board.

201 KAR 33:080. Scope of practice.

In response to questions by Co-Chair Harris, Ms. Parks stated that the last update to licensee standards was in 2012. Dietary and nutrition standards were based on national standards and continuing education recommendations. Recommendations were from medical associations and were based on solid scientific research.

A motion was made and seconded to approve the following amendments: to amend the TITLE; 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.

Board of Licensed Diabetes Educators

201 KAR 45:001. Definitions for 201 KAR Chapter 45. Matt James, assistant attorney general, represented the board.

In response to questions by Co-Chair Hale, Mr. James stated that the fifteen (15) hours of required continuing education was provided by an agency approved in accordance with another of the board's administrative regulations. The board's intent was to clarify how continuing education hours factored in as work experience. Licensees functioned in many venues, including hospitals, clinics, physician offices, and other health-care facilities. Senator Kerr stated that she had sponsored the legislation to ensure that Kentucky had licensed diabetes educators. Kentucky lead the nation in the number of cases of diabetes. Logan Gregory, who was chosen as the American Diabetes Association spokesperson, in a prior meeting with Senator Kerr and Senate President David Williams, explained how a diabetes educator saved her life. Co-Chair Hale stated that his granddaughter had just been diagnosed with Type 1 diabetes; therefore, this issue was very important to him.

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 and formatting 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: Game

301 KAR 2:178. Deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas. Amber Arnett, staff attorney; Steve Beam, division director; and Karen Waldrop, deputy commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 6 and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Department of Agriculture: Office of Agricultural Marketing: Agricultural Marketing

302 KAR 38:011. Repeal of 302 KAR 38:010. Clint Quarles, staff attorney, represented the department.

In response to questions by Senator Harris, Mr. Quarles stated that there was not a membership fee for the Kentucky Proud program. A membership fee might be considered in the future. Promotional materials were provided at cost.

Marketing and Product Promotion

302 KAR 39:011. Repeal of 302 KAR 39:010.

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

501 KAR 6:020. Corrections policies and procedures. Amy Barker, assistant general counsel, represented the department.

In response to a question by Co-Chair Harris, Ms. Barker stated that placement of incarcerated LGBTI inmates was determined by a number of factors, such as, for example, the identity stated by the inmate and security considerations. Placement was based on the federal Rape Elimination Act, which established that protective custody was an option but should not be the first unit considered.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the 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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: Department of Education: Office of Chief State School Officer

701 KAR 5:110. Use of local monies to reduce unmet technology need. David Couch, associate commissioner, and Amy Peabody, attorney, represented the department.

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

Claims before the Commission PUBLIC PROTECTION CABINET: Kentucky Claims Commission: Tax Appeals

802 KAR 1:010. Tax appeal procedures. Anthony Cotto, executive advisor; Patrick Flannery, interim executive director; and Mitch Mattingly, staff attorney, represented the commission.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 3, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

802 KAR 2:010. Negligence claims before the Kentucky Claims Commission.

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

Crime Victim Claims

802 KAR 3:010. Crime victim's compensation.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 to

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

802 KAR 3:020. Payment schedule for sexual assault examinations.

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.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy:
Certificate of Need

900 KAR 6:121. Repeal of 900 KAR 6:120. Molly Lewis, executive director, represented the office.

Department for Medicaid Services: Managed Care

907 KAR 17:020. Managed care organization service and service coverage requirements and policies. Matthew Kleinert, assistant to the secretary, and Donna Little, deputy executive director, Office of Legislative and Regulatory Affairs, represented the department.

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; and (2) to amend Section 1 to revise the utilization criteria used in determining medical necessity to comply with a court order and HB 69 of the 2018 Regular Session of the General Assembly. Without objection, and with agreement of the agency, the amendments were approved.

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

922 KAR 2:280 & E. Background checks for child care staff members, reporting requirements, and appeals. Christa Bell, director, and Elizabeth Caywood, chief of staff, represented the division.

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

The following administrative regulations were deferred or removed from the April 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 6:270. Probation and parole 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 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: Day Care

922 KAR 2:090 & E. Child-care center licensure.

922 KAR 2:100 & E. Certification of Family Child-Care Homes.

Day Care

922 KAR 2:111E. Repeal of 922 KAR 2:110.

922 KAR 2:120 & E. Child-care center health and safety standards.

922 KAR 2:180 & E. Requirements for registered child care providers in the Child Care Assistance Program.

922 KAR 2:190 & E. Civil penalties.

The subcommittee adjourned at 1:35 p.m. The next meeting of the subcommittee is tentatively scheduled for May 8, 2018, at 1 p.m.