

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the February Meeting

February 11, 2019

Call to Order and Roll Call

The February meeting of the Administrative Regulation Review Subcommittee was held on Monday, February 11, 2019, at 1:00 PM, in Room 149 of the Capitol Annex. Senator Stephen West, Chair, called the meeting to order, and the secretary called the roll.

Present were:

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

Guests: Todd Renner, Department of Revenue; Larry Hadley, Board of Pharmacy; Beth Gamble, Pam Hagan, Michael West, Board of Nursing; Scott Majors, Keith Poynter, Board of Physical Therapy; Ron Brooks, Daniel Schulman, Karen Waldrop; Department of Fish and Wildlife Resources; Michael Mullins, Zeb Weese, Office of Nature Preserves; Tony Hatton, Jon Maybriar; Department of Environmental Protection; William Codell, Tamra Gormley, Department of Juvenile Justice; Ryan Griffith, Jon Johnson, Brent Kroph, Larisa Plecha, Department of Transportation; Deanna Durrett, Amanda Ellis, Wayne Lewis; Department of Education; Stephen Humphress, Stephen Lee Walters, Department of Alcoholic Beverages; Jim Vicini, Division of Mine Safety; Heather Becker, Mitch Buchanan, Board of Home Inspectors; Denise Beatty, Charlese Blair, Health Information Exchange; Donna Little, Jim Musser, Office of Legislative and Regulatory Affairs; Jonathan Scott, Department for Medicaid Services; Laura Begin, Mary Carpenter, Paula Saenz, Department for Community Based Services; Joan Frey, Steve Hyndman, Galen College of Nursing; Brigitte Blom Ramsey, Prichard Committee for Academic Excellence; Steve Keeney, Kentucky Association of Home Inspection Professionals.

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, February 11, 2019, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Income Tax; Corporations

103 KAR 16:250. Net operating loss computation and deduction for corporations. Todd Renner, executive director, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 6 to make a technical correction to Figure 2-1; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, 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.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:370. Pharmacy services in long-term care facility (LTCF). Larry Hadley, executive director, represented the board.

In response to questions by Senator Clark, Mr. Hadley stated that an emergency medication kit was to ensure that medication would be on site for timely administration should the need arise. The kit was able to include prescription medication, over-the-counter medication, or a combination of both. An LTCF was able to have these medications in the amounts limited by this administrative regulation if there was a properly licensed administrator present.

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 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 1 to: (a) include definitions for “immediate supervision,” “pharmacist-in-charge,” and “supervision;” and (b) revise the definition for “long-term care facility” to: 1. reference KRS 216.510(1); and 2. exclude a family care home; and (3) to amend Section 2 to: (a) clarify that the pharmacist-in-charge of the dispensing pharmacy shall also be responsible for the access and administration of all drugs provided to an LTCF; (b) prohibit an emergency medication kit (EMK) from being stocked in a personal care home without personnel lawfully licensed to administer medications; and (c) clarify that LTCF drug stock in a personal care home shall not exceed five (5) individual doses each of thirty (30) non-controlled substances. Without objection, and with agreement of the agency, the amendments were approved.

Board of Nursing

201 KAR 20:056. Advanced practice registered nurse licensure and certification requirements. Dr. Beth Gamble, education consultant; Pam Hagan, acting executive director; and Michael West, general counsel, represented the board. Dr. Joan Frey, academic president, and Steve Hyndman, provost, Galen College of Nursing, appeared in opposition to 201 KAR 20:320.

201 KAR 20:062. Standards for advanced practice registered nurse (APRN) programs of nursing.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 and 5 through 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 20:161. Investigation and disposition of complaints.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 and 2 to correct statutory citations and 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 20:162. Disciplinary proceedings.

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 and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:215. Continuing competency requirements.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 3, 5, 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.

201 KAR 20:220. Nursing continuing education provider approval.

201 KAR 20:226. Repeal of 201 KAR 020:235, 201 KAR 020:420, 201 KAR 020:430, 201 KAR 020:440, and 201 KAR 020:460.

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.

201 KAR 20:240. Fees for applications and for services.

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

201 KAR 20:260. Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, 5, 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.

201 KAR 20:280. Standards for developmental status, initial status, and approval of prelicensure registered nurse and practical nurse programs.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:310. Faculty for prelicensure registered nurse and practical nurse programs.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add a definition for a “skills laboratory instructor;” and (2) to amend the RELATES TO paragraph 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.

201 KAR 20:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs.

In response to a question by Co-Chair West, Dr. Frey stated that it was necessary to prevent the use of a single standardized examination, post-program of study completion, which might prevent the release of a graduate’s name to a respected board of nursing for the purposes of sitting for the national licensure examination. This administrative regulation undermined the role of faculty in the determination of curricula, established learning outcomes, and the assessment of student learning through a variety of methods and sources. Other boards of nursing addressed this concern through issue papers, rather than through codified law. Galen College of Nursing respectfully requested that the subcommittee reject this administrative regulation in favor of an amended version that would prevent the use of a single standardized examination, post-program of study

completion, which might prevent the release of a graduate's name to a respected board of nursing for the purposes of sitting for the national licensure examination.

In response to a question by Co-Chair West, Mr. Hyndman stated that Galen College of Nursing was by far the largest educator of nursing students in Kentucky. Galen College of Nursing's RN and PN programs both had a ninety-seven (97) percent pass rate for the previous quarter. This administrative regulation prohibited educators from using an externally developed, nationally normed standardized examination as one (1) element of multiple assessments to determine if a student was ready to progress, graduate, and take the national licensure examination. Galen College of Nursing used externally developed, nationally normed standardized examinations, not to determine if a student should sit for the national licensure examination, but to determine if a student needed remedial assistance during progression. A representative from Galen College of Nursing appeared for the board's public hearing on this administrative regulation; however, that hearing was canceled.

In response to a question by Co-Chair West, Mr. West stated that the public hearing for this administrative regulation was canceled because, pursuant to KRS Chapter 13A, the board had not received notice that anyone intended to attend. The board did receive written public comments from Galen College of Nursing and included those in the board's Statement of Consideration. This administrative regulation stated that: "a program of nursing shall not require the completion of an external examination as a determinant of the student's progression or graduation. An external examination may be used to assist in the remediation of a student or as part of a final course grade. If used as part of a final course grade, it shall not count for more than ten (10) percent of the grade." This proposal still authorized the use of external examination in accordance with those requirements. Dr. Gamble stated that external examinations, which were purchased from a vendor and were not customized for individual schools or programs, were proprietary; therefore, nursing schools were unaware of the specific content. An external standardized examination could contain content that had not been covered by the nursing program or by a given course. Over twenty-five (25) percent of nursing programs used external standardized examinations to determine progression. Many nursing programs used external standardized examinations, not as an indicator of readiness to sit for the national licensure examination, but to protect the programs' pass rates.

Representative Marzian stated that this administrative regulation established parameters to protect students from failure to progress. Co-Chair West agreed with Representative Marzian and suggested that the board meet with representatives from Galen College of Nursing prior to this administrative regulation moving on through the House and Senate Standing Committees of jurisdiction.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 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 20:340. Students in prelicensure registered nurse and practical nurse programs.

201 KAR 20:350. Educational facilities and resources for pre-licensure registered nurse and practical nurse programs.

201 KAR 20:360. Continuing approval and periodic evaluation.

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

201 KAR 20:362. Fines for programs of nursing.

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

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph 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.

Board of Physical Therapy

201 KAR 22:170. Physical Therapy Compact Commission. Scott Majors, executive director, and Keith Poynter, general counsel, represented the board.

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

301 KAR 1:152 & E. Asian Carp and Scaled Rough Fish Harvest Program. Ron Brooks, director, Fisheries Division; Daniel Schulman, staff attorney; and Karen Waldrop, deputy commissioner, represented the department.

In response to questions by Senator Clark, Mr. Brooks stated that Asian Carp encroachment was well controlled in the Ohio River. Western Kentucky had contracted with the Kentucky Fish Center, which brought in 377,000 pounds of Asian Carp last month. The necessary ice machines were now functional.

301 KAR 1:155. Commercial fishing requirements.

ENERGY AND ENVIRONMENT CABINET: Office of Kentucky Nature Preserves

400 KAR 2:060. Definitions. Michael Mullins, regulation coordinator, and Zeb Weese, executive director, represented the office.

In response to a question by Co-Chair West, Mr. Weese stated that provisions for horseback riding were not changing, but horseback riding had been consolidated into the broad category of non-motorized recreation.

In response to a question by Co-Chair Hale, Mr. Weese stated that horseback riding was a subset of the category of non-motorized recreation and the provisions had no practical difference from the previous requirements.

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

400 KAR 2:070. The Office of Kentucky Nature Preserves.

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

400 KAR 2:080. Dedication of nature preserves and registration of natural areas.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3, 5, and 7 to comply with the drafting requirements of KRS Chapter 13A.

400 KAR 2:090. Management, use, and protection of nature preserves and natural areas.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 3, 6 through 8, 10, and 13 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

400 KAR 2:100. Hearings and appeals.

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

Rare Plant Recognition

400 KAR 3:010. Definitions for 400 KAR Chapter 3.

400 KAR 3:020. Criteria for identifying and designating endangered or threatened species of plants.

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.

400 KAR 3:030. Procedures for inclusion, removal or change of status of plant species on the state endangered or threatened list.

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

400 KAR 3:040. Endangered or threatened plant list.

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

Wild Rivers

400 KAR 4:110. Definitions for 400 KAR Chapter 4.

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.

400 KAR 4:125. Wild rivers administration.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 15 to comply with the drafting requirements of KRS Chapter 13A; and (2) to delete Section 16. Without objection, and with agreement of the agency, the amendments were approved.

400 KAR 4:130. Wild rivers change of use permit procedures.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to add Section 7 to incorporate a form by reference. Without objection, and with agreement of the agency, the amendments were approved.

400 KAR 4:140. Wild rivers change of use permit standards.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4 through 12, and 14 through 19 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Division of Waste Management: Hazardous Waste

401 KAR 39:060. General requirements. Tony Hatton, commissioner, and Jon Maybriar, director, represented the division.

In response to questions by Co-Chair West, Mr. Maybriar stated that 401 KAR 42:005 through 42:330 did not prohibit contractors from requesting an extension. Extension requests would still be processed based upon the reason the extension was necessary. The extension request process would include deadlines. Mr. Hatton stated that underground storage tanks would be regulated along the same lines as they historically had been over the last twelve (12) to thirteen (13) years. Funding availability was determined by the General Assembly's appropriations process, but there was not specific reason to be concerned that adequate funding would not be available.

In response to questions by Co-Chair Hale, Mr. Maybriar stated that a facility in temporary closure was required to maintain less than one (1) inch of water or product in the underground storage tank and to cathodically protect the tank. If those standards were not met, in order to return to service, the tank may need to undergo a line-pressure test to ensure that the tank would not cause a release to the environment. These facilities tended to be small, rural, and critical to their communities. Mr. Hatton stated that, over time, older tanks tend to have more expensive and complex problems due to technology and regulatory changes. If a release to the environment occurred, the matter would be addressed through funding from the Petroleum Storage Tank Environmental Assurance Fund. If fuel had been left in the underground storage tanks, there were companies who would remove that fuel at little or no cost. The division also had a program to assist with fuel removal or, for small owners, remove the tanks and fund remediation of the area.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 5, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 39:080. Hazardous waste handlers.

401 KAR 39:090. Hazardous waste permit program.

A motion was made and seconded to approve the following amendments: to amend Sections 7 and 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Enforcement and Compliance Monitoring

401 KAR 40:051. Repeal of 401 KAR 040:050.

Underground Storage Tanks

401 KAR 42:005. Definitions for 401 KAR Chapter 042.

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 42:020. UST system requirements, notification, registration, and annual fees.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3, 9 through 11, 14 through 16, 18, and 20 to comply with the drafting and formatting

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

401 KAR 42:060. UST system release and corrective action requirements.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 4 through 6 and 8 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 10 to revise material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:250. Petroleum Storage Tank Environmental Assurance Fund reimbursement.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 7 through 9, 12, 13, 15, and 19 through 21 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:330. Small Owners Tank Removal Account.

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

401 KAR 42:341. Repeal of 401 KAR 042:011, 042:030, 042:040, 042:045, 042:050, 042:070, 042:080, 042:090, 042:095, 042:200, 042:290, 042:300, 042:316, 042:320, 042:335, and 042:340.

Office of Kentucky Nature Preserves: General Administrative Procedures

418 KAR 1:010. Definitions for 418 KAR Chapter 1. Michael Mullins, regulation coordinator, and Zeb Weese, executive director, represented the office.

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.

418 KAR 1:020. Administrative procedures of the board.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 4

through 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.

418 KAR 1:040. Grant applications.

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.

418 KAR 1:050. Procedures for acquisition of land.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 5, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

418 KAR 1:060. Management.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 4, 6 through 10, and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

418 KAR 1:070. Remedies.

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

JUSTICE AND PUBLIC SAFETY CABINET: Department of Juvenile Justice:
Child Welfare

505 KAR 1:100. Department of Juvenile Justice Policies and Procedures: Admissions. William Codell, attorney; Tamra Gormley, attorney; and Chris Mann, deputy commissioner of program operations, represented the department.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph, 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.

505 KAR 1:110. Department of Juvenile Justice Policy and Procedures Manual: Program Services.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 and the material incorporated by reference to: (a) align restraint provisions for pregnant youth with Senate Bill 133 from the 2018 Regular Session of the General Assembly; and (b) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

505 KAR 1:180. Department of Juvenile Justice Policy and Procedures Manual: Day Treatment Services.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 and the material incorporated by reference to: (a) align restraint provisions for pregnant youth with Senate Bill 133 from the 2018 Regular Session of the General Assembly; (b) standardize procedures with other departmental policies; and (c) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

505 KAR 1:190. Department of Juvenile Justice Policy and Procedures: Interstate Compact for Juveniles.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph, 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.

TRANSPORTATION CABINET: Department of Highways: Division of Construction Procurement: Preconstruction

603 KAR 2:015. Prequalification for construction, certificate of eligibility, and contract claims dispute. Ryan Griffith, engineering director, and Jon Johnson, assistant general counsel, represented the division.

In response to questions by Co-Chair West, Mr. Griffith stated that the division's current claims process required very little information on the front end, putting the division at a disadvantage later in the process. This revision was intended to assist with planning by including more information earlier in the claims dispute process.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 through 5 and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 7 to clarify certificate of eligibility suspension, revocation, and alteration provisions. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: Office of Learning Programs Development: Office of Instruction

704 KAR 3:305. Minimum requirements for high school graduation. Deanna Durrett, general counsel; Amanda Ellis, deputy commissioner; and Wayne Lewis, commissioner, represented the office. Dr. Brigitte Ramsey, executive director, Prichard Committee for Academic Excellence, appeared in opposition to this administrative regulation.

In response to questions by Co-Chair West, Mr. Lewis stated that some schools had not lived up to opportunity promises to students because following a school's programs did not necessarily prepare all students for the future, especially minority and low-income students. This administrative regulation represented a first step, but a low bar, toward improvement. This administrative regulation did three (3) things: added flexibility; required basic competence in reading and mathematics, as evidenced by a standardized test that students were already taking or through a portfolio; and required that students meet at least one (1) of eight (8) qualifiers. Only approximately fifteen (15) states required Algebra II for all students for graduation. Kentucky currently required Algebra II for graduation; however, approximately sixty (60) percent of students needed remedial work in mathematics at the post-secondary level. It was unnecessary for all students to successfully complete Algebra II. Basic competence in reading and mathematics was necessary for future success. Assessment examinations were the same as those already given for other purposes.

In response to a question by Co-Chair West, Dr. Ramsey stated that the Prichard Committee for Academic Excellence, like the office, advocated for a more meaningful high school diploma; however, several components of this administrative regulation raised concerns for the committee. The committee was opposed to exit examination requirements for reading and mathematics, requiring students to meet graduation qualifiers, and removing Algebra II as a curriculum requirement. Available research and experience suggested that exit examinations did not have much correlation with future success. The problem was not with determining which students needed assistance, but which strategies would best achieve results. Graduation qualifiers placed responsibility on students, rather than schools, and raised concerns about equitability. Students could be tracked into low-opportunity pathways. Algebra II was necessary as a curriculum requirement. Kentucky should require higher, not lower, levels of mathematics. Regardless of semantics, the

assessments constituted exit examinations. Kentucky students routinely scored in the bottom twenty-five (25) percent in the nation regarding mathematics; therefore, Algebra II requirements should not be lowered; higher levels of mathematics should be required. Early childhood learning in mathematics should be emphasized.

At the January 9, 2019, meeting of the subcommittee, a motion was made and seconded to approve the following amendments: to amend Sections 1 through 5, 7, 8, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control:
Advertising Distilled Spirits and Wine**

804 KAR 1:030. Prohibited alcoholic beverage advertisements. Stephen Humphress, general counsel, and Stephen Walters, 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.

Advertising Malt Beverages

804 KAR 2:016. Repeal of 804 KAR 002:015.

**ENERGY AND ENVIRONMENT CABINET: Department of Natural Resources:
Division of Mine Safety: Miner Training, Education and Certification**

805 KAR 7:080. Training, certification, and annual retraining of mine emergency technicians. Michael Mullins, regulation coordinator, and Jim Vicini, division director, represented the division.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph 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.

Real Estate Authority: Board of Home Inspectors

815 KAR 6:001. Definitions for 815 KAR Chapter 6. Heather Becker, general counsel, and Mitch Buchanan, former board chair, represented the board. Steve Keeney, vice president, Kentucky Association of Home Inspection Professionals, appeared in opposition to these administrative regulations.

In response to a question by Co-Chair West, Mr. Keeney stated that the Kentucky Association of Home Inspection Professionals was concerned that these administrative regulations were being amended after the public comment period. The national examination, implicitly established by the amendment, was incongruous with reciprocity goals. This examination should be carefully studied before implementation. Pursuant to statute, forms should be filed electronically, but these administrative regulations did not provide for that. Submitting forms non-electronically was more expensive and time consuming than submitting forms through an electronic filing system. The burdens of these administrative regulations kept Kentucky from having the needed number of home inspectors.

In response to questions by Co-Chair West, Ms. Becker stated that the amendments filed Friday were the typical, staff-suggested amendments, which were not considered at the public hearing because the amendments had not yet been submitted to the board. The board held a special meeting to approve the staff-suggested amendments. The statute regarding electronic submission authorized, but did not require, an e-filing system. The board was working on an electronic submission system, which was not yet ready. The board believed that the administrative regulations would allow use of the electronic filing system once it was operable. Mr. Buchanan agreed that electronic filing was more efficient, which was the board's goal, but an exact implementation date and details were not yet available. The board contacted numerous states regarding matters of reciprocity, but had generally not received responses.

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.

815 KAR 6:010. Licensing requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; Sections 1, 2, 5, 7 through 9; and the material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 8 to require the board to comply with KRS Chapter 335B if using an applicant's criminal record as grounds for denial or nonrenewal of a license. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 6:030. Standards of conduct, complaints, and discipline.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 and 11 to comply with the drafting requirements of KRS Chapter

13A; and; (2) to amend Sections 6 through 10 to clarify and reorganize the board's complaint and disciplinary procedures. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 6:040. Education requirements and providers.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE, STATUTORY AUTHORITY paragraph, and Sections 1 through 12 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to add a new section to establish standards for test provider and examination approval; and (3) to amend Section 1(4) to establish a deadline for prelicensing education providers to request re-approval. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 6:101. Repeal of 815 KAR 006:020, 815 KAR 006:080, 815 KAR 006:090, and 815 KAR 006:100.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Data and Analytics: Division of Health Information: Kentucky Health Information Exchange

900 KAR 9:010. Kentucky Health Information Exchange participation. Denise Beatty, resource management analyst; Charlese Blair, healthcare data administrator; and Jim Musser, executive director, represented the division.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Section 8 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

907 KAR 1:270. Podiatry program services. Jim Musser, executive director, and Jonathan Scott, regulatory and legislative advisor, represented the department.

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

907 KAR 1:280. Payments for podiatry program services.

907 KAR 1:360. Preventative and remedial public health services.

Division of Protection and Permanency: Child Welfare

922 KAR 1:050. State funded adoption assistance. Laura Begin, regulation coordinator; Mary Carpenter, branch manager, Adoption Branch; Jim Musser, executive director; and Paula Saenz, branch manager, Transitional Services Branch, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add a definition for “special needs child;” and (2) to amend Sections 2 and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 1:500. Educational and training vouchers.

922 KAR 1:530. Post-adoption placement stabilization services.

The following administrative regulations were deferred or removed from the February 11, 2019, subcommittee agenda:

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

16 KAR 3:090. Certifications for advanced educational leaders.

STATE BOARD OF ELECTIONS: Forms and Procedures

31 KAR 4:120. Additional and emergency precinct officers.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Income Tax; Corporations

103 KAR 16:151. Repeal of 103 KAR 016:100, 103 KAR 016:110, 103 KAR 016:120, 103 KAR 016:130, 103 KAR 016:145, and 103 KAR 016:150.

103 KAR 16:270. Apportionment; receipts factor.

BOARDS AND COMMISSIONS: Board of Nursing

201 KAR 20:065. Professional standards for prescribing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid disorder.

Board of Physical Therapy

201 KAR 22:070. Requirements for foreign-educated physical therapists and physical therapist assistants.

Board of Licensure for Marriage and Family Therapists

201 KAR 32:110. Telehealth.

Board of Social Work

201 KAR 23:150. Complaint procedure, disciplinary action, and reconsideration.

DEPARTMENT Of AGRICULTURE: Office of Agricultural Marketing: Industrial Hemp

302 KAR 50:090. Enforcement, corrective action plans, and mandatory reporting to state and federal agencies, department to retain growing site information for at least three (3) years.

JUSTICE AND PUBLIC SAFETY CABINET: Special Law Enforcement Officers

500 KAR 2:020. Filing and processing SLEO commissions.

500 KAR 2:030. Special law enforcement officers: evaluation examination.

LABOR CABINET: Department of Workers' Claims

803 KAR 25:290. Continuation of medical benefits.

PUBLIC PROTECTION CABINET: Department of Insurance: Administration

806 KAR 2:092. Disclosure of local government taxes and collection fee.

806 KAR 2:100. Disclosure of insurance premium surcharge.

806 KAR 2:121. Repeal of 806 KAR 002:120 and 806 KAR 002:150.

Kinds of Insurance; Limits of Risk; Reinsurance

806 KAR 5:011. Repeal of 806 KAR 005:010 and 806 KAR 005:020.

Surplus Lines

806 KAR 10:030. Surplus lines reporting and tax payment structure.

Kentucky Department of Financial Institutions: Administration

808 KAR 1:060. Automated teller machines.

808 KAR 1:140. Fees.

808 KAR 1:161. Repeal of 808 KAR 001:020, 001:050, 001:090, 001:120, 001:130, 001:150, and 001:160.

808 KAR 1:170. Licensing and registration.

808 KAR 1:180. Use of special restricted funds.

Credit Unions

808 KAR 3:050. Conduct of credit unions.

808 KAR 3:061. Repeal of 808 KAR 03:020 and 003:060.

Industrial Loans

808 KAR 5:041. Repeal of 808 KAR 005:040.

Consumer Loans

808 KAR 6:095. Mandatory availability for repayment.

808 KAR 6:121. Repeal of 808 KAR 006:015, 006:105, 006:115, and 006:120.

Check Cashing

808 KAR 9:010. Deferred deposit database compliance.

808 KAR 9:031. Repeal of 808 KAR 009:020 and 009:030.

808 KAR 9:040. Customer account transfers.

808 KAR 9:050. Licensee change of control.

Multibank Companies

808 KAR 11:021. Repeal of 808 KAR 011:020.

Mortgage Loan Companies and Mortgage Loan Brokers

808 KAR 12:050. Processing and closing charges for real estate loans to consumers.

808 KAR 12:055. Uniform standards for mortgage loan processor applicant employee background checks.

808 KAR 12:111. Repeal of 808 KAR 012:002, 012:021, 012:022, 012:023, 012:024, 012:026, 012:030, and 012:110.

Administrative Hearing

808 KAR 14:010. Record retention.

808 KAR 14:20. Annual reporting.

General

808 KAR 15:010. Exceptions to bank lending limits.

808 KAR 15:020. Stay of notice of intention to remove from office.

808 KAR 15:030. Bank branches, offices, and loan production offices.

808 KAR 15:040. Multibank companies.

Horse Racing Commission: Thoroughbred Racing

810 KAR 1:301. Repeal of 810 KAR 001:004, 810 KAR 001:005, 810 KAR 001:007, 810 KAR 001:008, 810 KAR 001:009, 810 KAR 001:010, 810 KAR 001:012, 810 KAR 001:014, 810 KAR 001:015, 810 KAR 001:016, 810 KAR 001:017, 810 KAR 001:018, 810 KAR 001:021, 810 KAR 001:024, 810 KAR 001:026, 810 KAR 001:027, 810 KAR 001:028, 810 KAR 001:029, 810 KAR 001:030, 810 KAR 001:037, 810 KAR 001:040, 810 KAR 001:050, 810 KAR 001:060, 810 KAR 001:070, 810 KAR 001:080, 810 KAR 001:090, 810 KAR 001:100, 810 KAR 001:110, 810 KAR 001:130, 810 KAR 001:140, 810 KAR 001:145, 810 KAR 001:150, and 810 KAR 001:300.

General

810 KAR 2:001. Definitions.

810 KAR 2:010. Racing commission and administrative staff.

810 KAR 2:020. Thoroughbred and flat racing officials.

810 KAR 2:030. Chemical dependency.

810 KAR 2:040. Stewards.

810 KAR 2:050. Judges and Standardbred racing officials.

810 KAR 2:060. Owners' authorized agents and jockey agents.

810 KAR 2:070. Thoroughbred and other flat racing associations.

810 KAR 2:080. Standardbred racing associations.

Licensing

810 KAR 3:001. Definitions.

810 KAR 3:010. Licensing of racing associations.

810 KAR 3:020. Licensing of racing participants.

810 KAR 3:030. Licensing totalizator companies.

810 KAR 3:040. Advance deposit account wagering.

810 KAR 3:050. Simulcast facilities.

Flat and Steeplechase Racing

810 KAR 4:001. Definitions.

810 KAR 4:010. Horses.

810 KAR 4:020. Weights.

810 KAR 4:030. Entries, subscriptions, and declarations.

810 KAR 4:040. Running of the race.

810 KAR 4:050. Claiming races.

810 KAR 4:060. Objections and complaints.

810 KAR 4:070. Jockeys and apprentices.

810 KAR 4:080. Steeplechase racing.

810 KAR 4:090. Owners.

810 KAR 4:100. Trainers.

Standardbred Racing

810 KAR 5:001. Definitions.

810 KAR 5:010. Registration and identification of horses.

810 KAR 5:020. Eligibility and classification.

810 KAR 5:030. Claiming races.

810 KAR 5:040. Farm, corporate, or stable name.

810 KAR 5:050. Stakes and futurities.

810 KAR 5:060. Entries and starters.

810 KAR 5:070. Running of the race.

810 KAR 5:080. Harness racing and county fairs.

Pari-Mutuel Wagering

810 KAR 6:020. Calculation of payouts and distribution of pools.

Incentive and Development Funds

810 KAR 7:010. Backside improvement fund.

810 KAR 7:020. Kentucky thoroughbred breeders' incentive fund.

810 KAR 7:030. Kentucky thoroughbred development fund.

810 KAR 7:040. Kentucky Standardbred development fund and Kentucky Standardbred breeders' incentive fund.

810 KAR 7:060. Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian development fund.

810 KAR 7:070. Violations, discipline, disputes, and investigation.

Medication Guidelines

810 KAR 8:010. Medication; testing procedures; prohibited practices.

810 KAR 8:020. Drug, medication, and substance classification schedule and withdrawal guidelines.

810 KAR 8:030. Disciplinary measures and penalties.

810 KAR 8:040. Out-of-competition testing.

810 KAR 8:050. International medication protocol as condition of a race.

810 KAR 8:060. Post-race sampling and testing procedures.

Hearings and Appeals

810 KAR 9:010. Hearings, reviews and appeals.

Harness Racing

811 KAR 1:301. Repeal of 811 KAR 001:010, 811 KAR 001:015, 811 KAR 001:020, 811 KAR 001:025, 811 KAR 001:030, 811 KAR 001:035, 811 KAR 001:037, 811 KAR 001:040, 811 KAR 001:045, 811 KAR 001:050, 811 KAR 001:055, 811 KAR 001:060, 811 KAR 001:065, 811 KAR 001:070, 811 KAR 001:075, 811 KAR 001:080, 811 KAR 001:085, 811 KAR 001:90, 811 KAR 001:093, 811 KAR 001:095, 811 KAR 001:100, 811 KAR 001:105, 811 KAR 001:110, 811 KAR 001:115, 811 KAR 001:120, 811 KAR 001:130, 811 KAR 001:140, 811 KAR 001:150, 811 KAR 001:185, 811 KAR 001:215, 811 KAR 001:220, 811 KAR 001:225, 811 KAR 001:230, 811 KAR 001:260, 811 KAR 001:280, 811 KAR 001:285, 811 KAR 001:290, and 811 KAR 001:300.

Quarter Horse, Paint Horse, Appaloosa, and Arabian Racing

811 KAR 2:301. Repeal of 811 KAR 002:015, 811 KAR 002:020, 811 KAR 002:030, 811 KAR 002:035, 811 KAR 002:040, 811 KAR 002:045, 811 KAR 002:050,

811 KAR 002:056, 811 KAR 002:065, 811 KAR 002:070, 811 KAR 002:075, 811 KAR 002:080, 811 KAR 002:085, 811 KAR 002:090, 811 KAR 002:093, 811 KAR 002:096, 811 KAR 002:100, 811 KAR 002:105, 811 KAR 002:110, 811 KAR 002:130, 811 KAR 002:140, 811 KAR 002:150, 811 KAR 002:170, 811 KAR 002:180, 811 KAR 002:185, 811 KAR 002:190, 811 KAR 002:200, and 811 KAR 002:300.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Certificate of Need

900 KAR 6:075 & E. Certificate of need nonsubstantive review.

Department for Medicaid Services

907 KAR 1:560 & E. Medicaid hearings and appeals regarding eligibility.

907 KAR 1:563 & E. Medicaid covered services appeals and hearings unrelated to managed care.

Division of Fiscal Management: Hospital Service Coverage and Reimbursement

907 KAR 10:820 & E. Disproportionate share hospital distributions.

Department for Aging and Independent Living: Division of Operations and Support: Aging Services

910 KAR 1:240. Certification of assisted-living communities.

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

921 KAR 2:055 & E. Hearings and appeals.

Supplemental Nutrition Assistance Program

921 KAR 3:060 & E. Administrative disqualification hearings and penalties.

921 KAR 3:070 & E. Fair hearings.

Division of Protection and Permanency: Child Welfare

922 KAR 1:140. Foster care and adoption permanency services.

922 KAR 1:305. Licensure of child-caring facilities and child-placing agencies.

922 KAR 1:400. Supporting services.

922 KAR 1:565. Service array for a relative or fictive kin caregiver.

Daycare

922 KAR 2:160 & E. Child Care Assistance Program.

The subcommittee adjourned at 3:05 p.m. The next meeting of the subcommittee is tentatively scheduled for March 11, 2019, at 1 p.m.