

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the April Meeting

April 9, 2019

Call to Order and Roll Call

The April meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, April 9, 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 Julie Raque Adams, Perry B. Clark, and Alice Forgy Kerr; Representatives Deanna Frazier, and Tommy Turner.

Guests: Beau Barnes, Teachers' Retirement; Brigadier General Steven Bullard, Colonel Wayne Burd; Department of Military Affairs; Scott Majors, Board of Physical Therapy; Alicia Boyd, Mary Harville, Jennifer Luhrs, Kentucky Lottery Corporation; Ron Brooks, Brian Clark, Chris Garland, Gabe Jenkins, Kevin Kelly, Rich Storm, Karen Waldrop; Department for Fish and Wildlife Resources; Clint Quarles, Department of Agriculture; Tod Allen, Department of Education; Tim Cocanougher, Tony Cotto, Claims Commission; Barbara Borden, Scott Chapman, Jamie Eads, Vince Gabbard, John Forgy, Marc Guilfoil, Doug Hendrickson, Steve May, Mary Scollay, Mark Simmendinger, Horse Racing Commission; Stephanie Brammer-Barnes, Steve Davis, Matt Kleinert, Office of Inspector General; Robert Putt, Office of Health Data and Analytics; Julie Brooks, Monica Clouse, Department for Public Health; Jonathan Scott, Department for Medicaid Services; Laura Begin, Mary Carpenter, Elizabeth Caywood, Department for Community Based Services; Michael Abell, Sportsmen and Women United; Pete Blandford, Kentucky Quality Deer Management; Mary DeLodder, Perry McClure, Kentucky Crossbow Federation, Jamie Gray, Chet Hayes, League of Kentucky Sportsmen; Jacob Hencke, Larry Richards, Safari Club International, Judy Roberts, Michael Roberts, United Bow Hunters of Kentucky; Jean Ellen Spieles, Jim Strader, Gary Williams, Kentucky Bow Hunters Association; Joe Costa, The Red Mile; Seth DePasquale, Peter Ecabert, Martin Maline, Horseman's Benevolent and Protective Association; Clara Fenger, Dr. Andrew Roberts, North American Association of Racetrack Veterinarians; Chauncey Morris, Kentucky Thoroughbred Association; Michael Balor, Wyatt, Tarrant and Combs; Michael Buchanon, Warren County Judge Executive; Mark Guilfoyle, Wade Stone, The Medical Center of Bowling Green; Lili Lutgens, Therapeutic Intervention 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 Tuesday, April 9, 2019, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Teachers' Retirement System:
General Rules

102 KAR 1:163. Collection of life insurance benefits. Beau Barnes, deputy executive secretary of operations and general counsel, represented the system.

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.

102 KAR 1:168. Survivor's benefits.

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.

102 KAR 1:320. Qualified domestic relations orders.

A motion was made and seconded to approve the following amendment: to amend Section 7 to make a technical correction. Without objection, and with agreement of the agency, the amendment was approved.

DEPARTMENT OF MILITARY AFFAIRS: Division of Emergency Management:
Disaster and Emergency Services

106 KAR 1:081. Kentucky Emergency Response Commission (KERC) Tier II reporting and fee schedule requirements; Extremely Hazardous Substance (EHS) facility planning participation requirements. Brigadier General, Retired, Steven Bullard, director of administrative services and legislative liaison, Department of Military Affairs, and Colonel Wayne Burd, assistant director for operations, represented the division.

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

106 KAR 1:091. Kentucky Emergency Response Commission (KERC) fee account grant requirements for Local Emergency Planning Committees (LEPCs).

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3, 5, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 8 to add a checklist incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

106 KAR 1:101. Kentucky Emergency Response Commission (KERC) fee account grant requirements for state agencies.

106 KAR 1:111. Kentucky Emergency Response Commission (KERC) fee account grant review committee.

A motion was made and seconded to approve the following amendment: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to make a technical correction. Without objection, and with agreement of the agency, the amendment was approved.

106 KAR 1:121. Kentucky Emergency Response Commission (KERC) fee account grant distribution formula.

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

BOARDS AND COMMISSIONS: Board of Physical Therapy

201 KAR 22:020. Eligibility and credentialing procedure. Scott Majors, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 5 to: (a) comply with the drafting requirements of KRS Chapter 13A; and (b) restore existing language that was inadvertently deleted. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Lottery Corporation

202 KAR 3:040. Internal audit. Alicia Boyd, vice president of audits; Mary Harville, general counsel; and Jennifer Luhrs, staff attorney, represented the corporation.

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

301 KAR 2:172. Deer hunting seasons, zones, and requirements. Brian Clark, staff attorney; Rich Storm, commissioner; and Karen Waldrop, deputy commissioner, represented the department. Pete Blandford, president, Kentucky Quality Deer Management; Chet Hayes, president, League of Kentucky Sportsmen; and Perry McClure, president, Kentucky Crossbow Federation, appeared in support of these administrative regulations. Jamie Gray, sportsman; Larry Richards, president, Kentucky Chapter, Safari Club International; Ellen Spieles, resident landowner; Jim Strader, outdoor reporter, WHAS radio; and Gary Williams, Western Kentucky bow hunter, appeared in opposition to these administrative regulations.

In response to a question by Co-Chair West, Mr. Storm stated that these administrative regulations proposed to expand Kentucky's crossbow season. The most common request from sportsmen was that Kentucky offer more crossbow opportunities. Surveys consistently demonstrated strong support for expanding Kentucky's crossbow season, and biological studies indicated that a longer season would not negatively impact wildlife resources. Buck and doe harvests were tracked based on hunting method, and data demonstrated that concerns about deer overharvesting were unwarranted. The proposal was not for a fully concurrent archery – crossbow deer-hunting season, but for a longer crossbow hunting season. Every bordering state, Southeastern state, and twenty-eight (28) states in total had a fully concurrent archery – crossbow deer-hunting season. The department had worked with stakeholders and the public since 2016 to develop the compromise established in these administrative regulations.

In response to questions by Senator Raque Adams, Mr. Storm stated that implementation of crossbow hunting during the rutting and breeding season would not diminish the deer herd in any way. The decreasing rate of hunting in Kentucky might be attributed, at least in part, to increasing rates of land leasing. Other contributing factors were an aging or otherwise-occupied population. Ms. Waldrop added that the decreasing rate of hunting might also be the result of fewer places to hunt; therefore, the department had made efforts to provide as many hunting opportunities and venues as possible, including through public, private, and leasing agreements. A crossbow had a trigger and was held horizontally but was still considered archery equipment, rather than a firearm. Crossbows had a different season from other archery equipment. Mr. Clark stated that the department preferred to use the term, "hunting method," in lieu of specific weapon designations. Senator Adams stated that materials supplied to support this proposal were misleading. The materials depicted that almost every state had a concurrent archery – crossbow season, making Kentucky an outlier; however, the Kentucky deer season began significantly earlier than in surrounding states.

Mr. Hayes stated that the League of Kentucky Sportsmen represented traditional archery hunters and crossbow hunters. The league supported these administrative regulations without further modification because crossbow as a hunting method was growing in popularity and many league members had been led to reconsider previous opposition. The Deer Working Group reached a consensus in the development of these administrative regulations. Implementation of this proposal should not negatively impact Kentucky's wildlife resources. There were numerous opportunities for all interested stakeholders to be involved in the development of these administrative regulations. These administrative regulations would provide increased opportunities for sportsmen to make use of a sustainable Kentucky resource, which was in need of additional control in many areas. There would be no loss of hunting days for any hunting method user group, while there would be new opportunities for crossbow hunters.

Mr. Blandford stated that Kentucky Quality Deer Management wholly supported these administrative regulations. Crossbow hunting was easier for youth, smaller hunters, and those with less strength. This proposal was fair because crossbows were archery equipment, and it had been discriminatory for crossbow hunters to have fewer hunting opportunities based on hunting method.

Mr. McClure stated that the Kentucky Crossbow Federation fully supported 301 KAR 2:172 without further modification. Department biologists determined that this proposal would not be detrimental to Kentucky's deer resources. Each hunter should be allowed to use the hunting method of his or her choice.

Mr. Strader stated that he hunted with a crossbow and was not opposed to its use generally. He was opposed to a crossbow season that extended to the pre-rutting season because it would be detrimental to the buck population at a vulnerable time. Because a crossbow was advertised to shoot like a rifle and did shoot like a rifle, it was inappropriate as a hunting method during the rutting season. This issue was about money for the crossbow industry, with the result being detrimental to Kentucky's deer resources. Land leasing was primarily responsible for the decrease in hunting. He also stated that stakeholders had addressed this issue with the department ten (10) years prior, and the department, the legislature, and sportsmen had agreed to a compromise to not expand crossbow use. The department's denial of the compromise was untrue. About four (4) or five (5) compromises were considered at the meeting ten (10) years prior. One (1) of the proposed compromises was to begin the season later with five (5) extra weeks of crossbow hunting.

Representative Turner stated that he, Representative Hale, and at the time, Representative Webb, were present at that meeting. It lasted all day, but ultimately stakeholders were unsuccessful in reaching a final agreement.

Ms. Spieles stated that Carter County's deer population had been reduced due to a recent outbreak of Epizootic Hemorrhagic Disease (EHD.) The modern crossbow was being marketed as a rifle. States that surrounded Kentucky had a much later deer season and prohibited baiting. The argument that crossbow hunting was useful for smaller or weaker hunters was a spurious one. Ms. Spieles showed a picture of an eight (8) year-old girl who had taken a buck using traditional archery equipment. Hunting was a privilege and a responsibility, not a right. The structure of Kentucky's deer season would be detrimental to deer resources. In response to a question by Co-Chair Hale, Ms. Spieles requested that the subcommittee find these administrative regulations deficient because the early deer season structure was inappropriate in a state that allowed baiting.

Mr. Richards stated that the Kentucky Chapter of the Safari Club International was opposed to these administrative regulations because they would be detrimental to Kentucky's deer resources. Deer hunting in Kentucky was a \$770 million annual event, and this proposal put that income at risk. Data from the department demonstrated that seventy-two (72) percent of Kentucky hunters would harvest one (1) deer annually. Most of the deer harvested would be killed with a firearm. Expanding the crossbow season would not increase the kill rate, nor would it improve the status of the deer resources. Many sportsmen were opposed to this proposal. The public had not had adequate opportunity to provide input in the development of these administrative regulations. For example, the public hearing was held during the workday so that those who worked and wanted to attend would have to be absent from their jobs. This proposal would increase the doe population, not the buck population, which could actually increase the rate of vehicle collisions with deer. More data and perhaps a pilot program approach was needed.

Mr. Gray stated that he was not opposed to the use of a crossbow but was opposed to such an early crossbow season. There were fawns that would still be unweaned at the beginning of the proposed crossbow season. The department should be making the reduction of the doe population a priority because most vehicle collisions involved does. Kentucky's crossbow season should begin later as part of the muzzleloader season. The deer breeding season in Kentucky was very different from the northern part of the country. The time periods for bucks to shed antlers varied from year to year.

Mr. Williams stated that bow hunting was challenging, but crossbow use was far less challenging. The department should consider a three (3) year pilot study to increase hunting. More research was needed. Kentucky was losing traditional archery. Mr. Williams asked the subcommittee to request deferral of these administrative regulations. The department had not been supportive of traditional bow hunters.

Co-Chair Hale stated that Representative Turner had been a long-term supporter of Kentucky sportsmen. All stakeholders had been given adequate opportunity to contribute, but an agreement had not been reached at the meeting ten (10) years prior. A lot of effort and study had been made in the development of these administrative regulations.

Approximately seventy (70) percent of commenters who had contacted Co-Chair Hale were in support of these administrative regulations. While he did not support all provisions of these administrative regulations, Co-Chair Hale reminded participants that this subcommittee did not approve administrative regulations.

In response to a question by Senator Raque Adams, Ms. Waldrop stated that beginning the deer season later with an extra five (5) weeks of crossbow hunting was one (1) of the compromises considered by the department. This proposal was also a compromise in that the initial plan was for a fully concurrent archery – crossbow season. Most hunters like to be out during the nice autumn weather.

In response to a question by Representative Frazier, Mr. Storm stated that, if implementation of these administrative regulations proved detrimental to wildlife resources, the department would amend requirements. For example, when Eastern Kentucky deer were struck with EHD, the department reduced hunting in that zone. Currently, over eighty (80) percent of counties had an abundance or overabundance of deer. Ms. Waldrop stated that the department had accurate data regarding deer populations in order to carefully manage the resource. Bag limits were especially effective ways to manage.

In response to a question by Co-Chair Hale, Mr. Clark stated that traditional bow hunting would not be harmed by implementation of this proposal because data in other states had not demonstrated a significant reduction in traditional bow hunting upon introduction or expansion of crossbow hunting opportunities. Ms. Waldrop stated that this proposal was biologically sustainable. Mr. Storm stated that the department was planning several deer-related working groups, including groups on regional Chronic Wasting Disease, land leasing, and baiting. All stakeholders were invited to participate.

Co-Chair West reiterated that the criteria to find an administrative regulation deficient was established in KRS 13A.030(2)(a). An administrative regulation that was not found deficient would continue through the process.

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

301 KAR 2:178. Deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas.

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

Hunting and Fishing

301 KAR 3:022. License, tag, and permit fees.

GENERAL GOVERNMENT CABINET: Department of Agriculture: Office of the Commissioner

302 KAR 3:011. Repeal of 302 KAR 003:010. Clint Quarles, staff attorney, represented the department.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: Department of Education: General Administration

702 KAR 1:160. School health services. Todd Allen, deputy general counsel, represented the department.

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.

Office of Learning Support Services

704 KAR 7:081. Repeal of 704 KAR 007:080.

PUBLIC PROTECTION CABINET: Kentucky Claims Commission: Tax Appeals

802 KAR 1:010. Tax appeal procedures. Tony Cotto, executive advisor, and Tim Cocanougher, executive director, represented the commission.

PUBLIC PROTECTION CABINET: Department of Insurance: Administration

806 KAR 2:092. Disclosure of local government taxes and collection fee. Tony Cotto, executive advisor, represented the department.

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

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

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

paragraphs 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 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.

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.

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. Shawn Chapman, deputy general counsel; John Forgy, general counsel; Marc Guilfoil, executive director; and Dr. Mary Scollay, equine medical director, represented the commission. Joe Costa, president, The Red Mile, and Chauncey Morris, executive director, Kentucky Thoroughbred Association, appeared in support of these administrative regulations. Seth DePasquale, pharmacist; Peter Ecabert, general counsel, National Horsemen's Benevolent and Protective Association; Dr. Clara Fenger, veterinarian, North American Association of Racetrack Veterinarians; Marty Maline, executive director, Kentucky Horsemen's Benevolent and Protective Association; and Dr. Andrew Roberts, veterinarian, racetrack practitioners, appeared in opposition to these administrative regulations.

In response to a question by Co-Chair West, Mr. Guilfoil stated that this package of administrative regulations was in part a response to Governor Bevin's Red Tape Reduction Initiative and in part a revision of requirements. This package reorganized and consolidated 112 administrative regulations into fifty-nine (59) administrative regulations. The consolidation made the requirements more user friendly and easier to update in the future. Requirements pertaining to medications were extensively vetted by the Rules Committee, an ad hoc committee of the commission, and were necessary for public and equine protection. The proposal was developed over a long period of time and was not a reaction to recent events in California. Stakeholders were fully engaged with the Rules Committee

in the development of this package. The full Kentucky Horse Racing Commission considered these administrative regulations at the September 25, 2018 meeting, and the package was unanimously approved.

Mr. Costa stated that The Red Mile was in full support of these administrative regulations.

Mr. Morris stated that Kentucky Thoroughbred Association, which represented Keeneland and Churchill Downs, was in full support of these administrative regulations. In particular, the out-of-competition administrative regulation, 810 KAR 8:040, and the claiming races administrative regulations, 810 KAR 4:050 and 810 KAR 5:030, targeted the most vulnerable part of the horse population to ensure the safety of both horses and riders.

Mr. Maline stated that the Kentucky Horsemen's Benevolent and Protective Association was opposed to these administrative regulations because these provisions encouraged predatory claiming practices from outside interests that threatened racing in Kentucky. The new voided claiming rule offered a "warranty" to those who engaged in predatory claiming practices. There was an absence of data to support the purported welfare benefits of voided claims.

Mr. Ecabert stated that the National Horsemen's Benevolent and Protective Association was opposed to these administrative regulations. The subcommittee, on September 8, 2015, found deficient the requirements now established in 810 KAR 8:050, International medication protocol as condition of a race. Governor Beshear authorized the administrative regulation to become effective notwithstanding the finding of deficiency. The Attorney General on December 18, 2015, released the opinion that 810 KAR 8:050 was deficient because it was an unconstitutional delegation of governmental authority to private racetracks.

Dr. Fenger stated that racetrack practitioners were opposed to 810 KAR 8:010, Medication; testing procedures; prohibited practices, which established a definition for "therapeutic anabolic steroid" that did not include stanozolol, the most commonly used anabolic steroid for equine. Stanozolol was not used in actively racing horses and had been prohibited for use in actively racing horses for over ten (10) years. By omitting stanozolol from the definition, stanozolol would become prohibited in situations other than in actively racing horses. 810 KAR 8:010 also established a violation if any drug, medication, substance, or metabolic derivative foreign to the horse was found to be in the horse upon testing. Hay, oats, and water would constitute substances foreign to a horse. All horses carried within their bodies these, and other, types of foreign substances. Trace amounts of substances, such as pharmaceuticals, were present in the environment, including in the water that a horse might drink. Violations pertaining to horses that tested positive for trace amounts of a prohibited substances were very common. The requirement for a good faith

investigation in these kinds of situations had been removed. Additionally, drugs not approved by FDA were prohibited from being used or possessed at a location under the jurisdiction of the commission. Many drugs, such as vitamins, were not FDA approved. Horse racing was a \$4 billion business in Kentucky, and it was important not to jeopardize this industry. Medical labeling requirements were burdensome.

Dr. Fenger stated that racetrack practitioners were also opposed to 810 KAR 8:040, Out-of-competition testing, because certain substances would be banned for horses from birth until death. Horses would be prohibited from participating in clinical trials for drugs not yet approved by FDA, and compounded drugs would be banned.

Mr. DePasquale stated that, pursuant to 810 KAR 8:040, any compounded drug would be considered not approved by FDA; therefore, his practice as a compounding pharmacist would be ended.

Dr. Roberts stated that these administrative regulations should have been considered by the Equine Drug Committee. That committee would have discerned and corrected some of the errors in this package. The commission decided instead to send this package to ad hoc Rules Committee for consideration, probably because that committee was smaller and would comply with the commission's wishes. These requirements were very similar to those of California, which had recently experienced a spate of unfortunate incidents in the horse racing industry.

In response to questions by Co-Chair West, Mr. DePasquale stated that his pharmacy only sold compounded drugs; therefore, a ban on compounded drugs would effectively end his business.

In response to a question by Co-Chair West, Dr. Scollay stated that the voided claim rule was a welfare initiative and was not a "warranty" on a horse. The voided claim rule was intended as an incentive in the decision making of the horse's trainer so that, for the safety of horse and rider, a horse at risk might not be raced. Stanozolol was not prohibited for use in all circumstances; it was prohibited in proximity to racing. A horse that had been administered stanozolol would not race for at least six (6) months. The commission was not being inundated with post-race positive drug-testing results. The unequivocal assertion that trace amounts of substances did not have an effect on a horse was erroneous. There was insufficient clinical evidence to support that contention. The medication labeling rule had been in place at least since 2008 and should not prove burdensome. The commission recognized a legitimate need for compounded drugs and had procedures in place to accommodate that need. The out-of-competition provisions for eligibility were unchanged in this package. The commission had to date not tested a foal, a breeding stallion, or a horse in extremis. The focus was on horses actively training and racing. The commission did not feel that it would be appropriate that an actively training and racing horse be subject to clinical trials.

Mr. Forgy stated that the international protocol as a condition for a race remained unchanged in this package. The commission planned to continue to meet with stakeholders. Kentucky had not used the international protocol as a condition for a race because there had not been a racetrack that had opted to conduct a furosemide-free race. It was possible that the international protocol as a condition for a race would be repealed by the commission.

In response to questions by Co-Chair West, Mr. Forgy stated that non-FDA-approved substances were prohibited, except as approved by the commission. Dr. Scollay stated that FDA had guidelines for the use of compounded products. The commission would act in compliance with those guidelines on a per-substance basis.

In response to a question by Co-Chair West, Mr. Guilfoil agreed that the commission would continue to work with stakeholders to avoid any unintended consequences that might result from these administrative regulations. The commission intended to protect Kentucky's signature industry.

General

810 KAR 2:001. Definitions.

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.

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

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION AND CONFORMITY paragraph and Sections 1 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5 to comply with the formatting and drafting requirements of KRS Chapter 13A and make technical changes. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 2:030. Chemical dependency.

In response to questions by Co-Chair West, Mr. Chapman stated that the proposed oral amendment changed the word, “or,” to the word, “and,” in two (2) locations. This amendment applied to individuals who might be under the influence of intoxicants while engaged in activities for which they hold a license and while the individuals are on association grounds.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to clarify that individuals who were prohibited from being under the influence of intoxicants while engaged in activities for which they hold a license and while on association grounds. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 2:040. Stewards.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 4, 6, 7, 12, 13, 16, 19 through 21, and 24 through 26 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph; Sections 1 through 5; and material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 6, 11, 16, 20 through 22, 27 through 29, and 34 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 2:080. Standardbred racing associations.

A motion was made and seconded to approve the following amendments: to amend Sections 5, 7, 8, 11, 14 through 17, 19, 21, 22, 24 through 28, and 31 through 33 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Licensing

810 KAR 3:001. Definitions.

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

810 KAR 3:010. Licensing of racing associations.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to establish when renewal applicants and applicants proposing substantial changes in ownership shall be charged an investigation fee and how the fee shall be paid; and (2) to amend Sections 1 through 5, 8, and 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.

810 KAR 3:020. Licensing of racing participants.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph; Sections 2 through 6, 10, 11, 15, 22, 24; and material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 6 to include all of the licensure categories and fees listed in the application form; and (3) to amend Section 24 and the Licensing Application form to: (a) only require the last four (4) digits of the applicant's social security number; and (b) update payment provisions. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 3:030. Licensing totalizator companies.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph and Sections 1 through 4, 7, 8, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 3 to establish when renewal applicants and applicants proposing substantial

changes in ownership shall be charged an investigation fee. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 3:040. Advance deposit account wagering.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to establish when renewal applicants and applicants proposing substantial changes in ownership shall be charged an investigation fee; and (2) to amend Sections 1 through 4, 8 through 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.

810 KAR 3:050. Simulcast 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 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Flat and Steeplechase Racing

810 KAR 4:001. Definitions.

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

810 KAR 4:010. Horses.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 3, 9 through 11, and 15 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 7 and to delete provisions on which the commission had not yet taken official action. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 4:020. Weights.

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

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

A motion was made and seconded to approve the following amendments: to amend Sections 3 through 5, 8 through 11, and 15 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 4:040. Running of the race.

A motion was made and seconded to approve the following amendments: to amend Sections 5, 6, 10, 12 through 15, and 17 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 4:050. Claiming races.

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

810 KAR 4:060. Objections and complaints.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 5 through 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 4:070. Jockeys and apprentices.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3, 6 through 12, and 14 through 18 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 4:080. Steeplechase racing.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3 through 6, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 4:090. Owners.

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

810 KAR 4:100. Trainers.

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

Standardbred Racing

810 KAR 5:001. Definitions.

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.

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

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 2, 4, 5, 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.

810 KAR 5:020. Eligibility and classification.

810 KAR 5:030. Claiming races.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to clarify that it is the “title” to the horse that shall be transferred back to the owner if a claim is voided; and (2) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1, 3 through 6, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

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

810 KAR 5:050. Stakes and futurities.

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

810 KAR 5:060. Entries and starters.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3, 5, 9, 10, 14, 17, 20 through 22, 25, 27, and 28 to comply with the drafting and formatting requirements of KRS Chapter 13A and for clarity. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 5:070. Running of the race.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 5, 8, 9, 14, 17, 18, 27, 30, 31, 34, 35, 43, and 49 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend Sections 10, 15, and 18 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Pari-Mutuel Wagering

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

A motion was made and seconded to approve the following amendments: to amend Sections 3, 4, 9, 14, and 15 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Incentive and Development Funds

810 KAR 7:010. Backside improvement fund.

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

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

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 3 through 5, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 3 to delete the requirement that horses earning awards at a Kentucky race track through any component other than the claiming component during the same calendar year shall not be eligible for the Kentucky claiming component. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 7:030. Kentucky thoroughbred development fund.

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

A motion was made and seconded to approve the following amendments: to amend Sections 1, 5, 6, 11, and 22 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

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

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

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

Medication Guidelines

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

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3, 6, 10 through 12, 15, 17 through 21, and 23 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

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

810 KAR 8:030. Disciplinary measures and penalties.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 4 through 6, 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.

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

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 3, 5, 6, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

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

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 1 and 3 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Hearings and Appeals

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

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

and 3 through 5; 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.

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 001:240, 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: Certificate of Need

900 KAR 6:075 & E. Certificate of need nonsubstantive review. Steve Davis, inspector general, and Matt Kleinert, deputy general counsel, represented the division. Michael Baker, attorney, Wyatt, Tarrant, and Combs, appeared in support of this administrative regulation. Michael Buchanon, judge executive, Warren County; Mark Guilfoyle, attorney, The Medical Center; and Wade Stone, executive vice president, Medical Center of Bowling Green, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair West, Mr. Davis stated that this administrative regulation removed three (3) categories of services commensurate with House Bill 444 from the 2018 Regular Session of the General Assembly. This administrative regulation also provided an expedited review for a Class I ambulance provider applicant in a county without an ambulance provider or with only one (1) ambulance provider that is not publically owned or operated. A county with only one (1) ambulance provider and more

than 50,000 citizens might be at risk were that one (1) ambulance provider to go out of business for some reason. It was important to establish opportunities for competition, especially in situations in which the ambulance provider was directly affiliated with a local hospital. There had been instances of an ambulance provider passing closer hospitals in order to deliver patients to an affiliated hospital. This administrative regulation also addressed cost control issues that were sometimes related to a single ambulance provider. The Certificate of Need process tended to be highly contentious. Often a holder of a Certificate of Need would go to significant expense in attempts to prevent additional Certificates of Need from being approved within the certificate holder's service area. The cabinet used summaries from a report created by the Pegasus Institute to study the policy ramifications of single providers and lack of competition. The cabinet recognized that there were limitations and issues with the report.

In response to questions by Senator Raque Adams, Mr. Davis stated that, after this administrative regulation was initially filed in August 2018, a Certificate of Need applicant requested a hearing. That hearing was conducted by a hearing officer to determine if nonsubstantive review was appropriate. That hearing officer misinterpreted provisions of this administrative regulation; therefore, as part of the Statement of Consideration process, the cabinet further amended this administrative regulation to clarify the provisions that were misinterpreted by the hearing officer. Mr. Kleinert stated that it was inappropriate for the cabinet to comment on pending litigation. Senator Raque Adams stated that this subcommittee should not be asked to consider an administrative regulation with pending litigation. Mr. Kleinert stated that the litigation could not proceed unless this administrative regulation continued through the amendment process.

In response to questions by Co-Chair Hale, Mr. Davis stated that information related to patients being driven past closer hospitals in order to be transported to a hospital affiliated with the ambulance provider came from letters, reports, and public comments received during this administrative regulation's public comment period. There were reports that patients who requested to be transported to a specific hospital were in some cases transported to the facility affiliated with the ambulance provider notwithstanding the patient requests.

In response to a question by Co-Chair West, Mr. Baker stated that he represented the Certificate of Need applicant in the pending litigation. This did not represent a second administrative regulation. This administrative regulation had been amended in response to public comments during the normal administrative regulation process. This administrative regulation had been deferred from consideration by this subcommittee twice. Pending litigation should not prevent this administrative regulation from being considered by this subcommittee. This administrative regulation should not be found deficient by this administrative regulation because KRS 216B.095(3)(f) authorized the cabinet to promulgate an administrative regulation to establish additional categories of nonsubstantive review. Nonsubstantive review did not mean that a Certificate of Need was

not required. Only four (4) states, including Kentucky, required a Certificate of Need for an ambulance provider. Statistics from the Kentucky Board of EMS demonstrated that in 2017 there were 5,585 patient transports in the provider area at issue. Of those, only 1,713 were transported to the nearer hospital; the remainder were transported to the hospital with which the ambulance provider was affiliated.

Senator Raque Adams stated that, separate from issues with specific providers, there were significant concerns regarding this administrative regulation. The Statement of Consideration explained that the Amended After Comments version was to clarify provisions in light of a recent misinterpretation by a hearing officer. This administrative regulation appeared to be a back channel to support a specific provider.

Judge Buchanon stated that the citizens and taxpayers of Warren County opposed this administrative regulation because it would have an immediate negative impact on the county's citizens and businesses. There was not a current health care crisis in Warren County; however, implementation of this administrative regulation might cause such a health care crisis, which would force local government to establish an ambulance provider tax. The report from the Pegasus Institute was widely disputed, and much of the data it contained was false or misleading. The current response time for the ambulance provider was better than the national average. The executive branch should not have the authority to impose a tax by administrative regulation to address a problem that didn't exist in Warren County. This was an effort to support a specific provider.

Mr. Stone stated that The Medical Center served South Central Kentucky for ninety-three (93) years. The Medical Center treated patients regardless of ability to pay. The affiliated ambulance provider had provided excellent service to the area for forty (40) years. The report from the Pegasus Institute was widely disputed. The ambulance provider respected and honored patient choice during patient transports; however, not all hospitals offered the same services. Patients were transported to the hospital that offered the services necessary. For example, Tristar Greenview hospital did not offer obstetrics and other services. Every ambulance provider transport complaint had been investigated, and none of the complaints had been substantiated in forty (40) years. The issue was that a Tennessee-based, for-profit hospital intended to enter the ambulance provider business in conjunction with a political favor. The subcommittee should find this administrative regulation deficient.

Mr. Guilfoyle stated that this was the second administrative regulation on this topic. There were two (2), not one (1), licensed ambulance providers in Warren County; therefore, this administrative regulation did not apply. The hearing officer determined that this administrative regulation did not apply because there were two (2) ambulance providers. The cabinet then amended this administrative regulation to override the hearing officer's determination. The cabinet was attempting to support the applicant through amending this administrative regulation. The pending litigation would be affected by the

determination of this subcommittee. This was a blatant case of special legislation. The applicant filed litigation the day after the cabinet filed this emergency administrative regulation; however, LRC did not post the administrative regulation for five (5) days.

In response to a question by Co-Chair West, Mr. Davis stated that the cabinet did not have nefarious intent pertaining to this administrative regulation. The cabinet's goal was broad, and this administrative regulation was not intended only to address the Warren County situation in particular. This was done to address community concerns and to support competition, which tended to improve patient health care outcomes.

A motion was made by Senator Raque Adams to find this administrative regulation deficient based, not on policy toward any specific provider, but based on the process. Senator Clark seconded the motion and stated that, if the CON process needed to be changed, that needed to be done through a statutory, not a regulatory process. A roll call vote was taken. There being four (4) votes to find the administrative regulation deficient and three (3) votes against finding the administrative regulation deficient, the motion failed. Representative Frazier explained her no vote by stating that she wished to have the litigation in this matter continue through the court system. Co-Chair West explained his no vote by stating that this was one (1) of the hardest issues for this subcommittee, but the matter did not seem to fall within the criteria established in KRS 13A.030(2)(a) for a finding of deficiency.

Office of Health Data and Analytics: Division of Analytics: Data Reporting and Public Use Data Sets

900 KAR 7:030. Data reporting by health care providers. Robert Putt, executive director, represented the division.

Division of Health Benefit Exchange: Kentucky Health Benefit Exchange

900 KAR 10:021. Repeal of 900 KAR 010:010, 900 KAR 010:020, and 900 KAR 010:110. Robert Putt, executive director, represented the division.

Department for Public Health: Division of Maternal and Child Health: Kentucky Birth Surveillance Registry

902 KAR 19:010. Kentucky Birth Surveillance Registry. Julie Brooks, regulation coordinator, and Monica Clouse, program coordinator, 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 through 3 and 5 to comply with the drafting of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Inspector General: Division of Healthcare: Health Services and Facilities

902 KAR 20:076. Repeal of 902 KAR 020:073. Stephanie Brammer – Barnes, regulation coordinator, represented the division.

Division of Fiscal Management: Hospital Service Coverage and Reimbursement

907 KAR 10:820 & E. Disproportionate share hospital distributions. Jonathan Scott, regulatory and legislative liaison, represented the division.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 2, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Behavioral Health, Developmental and Intellectual Disabilities:
Division of Protection and Permanency: Child Welfare

922 KAR 1:140. Foster care and adoption permanency services. Laura Begin, regulation coordinator, and Elizabeth Caywood, deputy commissioner, represented the division.

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.

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

Daycare

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

Other Business: Co-Chair West stated that the Administrative Regulation Review Subcommittee, which was a statutory committee, operated differently than most other legislative committees. Administrative regulations implemented statutes that had already passed through the legislature as bills. Rather than approving administrative regulations,

this subcommittee reviewed, commented on, negotiated amendment to, and asked questions about administrative regulations as a component of legislative oversight.

The following administrative regulations were deferred or removed from the April 9, 2019, subcommittee agenda:

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

16 KAR 3:011. Repeal of 016 KAR 003:010, 016 KAR 003:020, 016 KAR 003:030, 016 KAR 003:040, and 016 KAR 003:050.

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: Teachers' Retirement System: General Rules

102 KAR 1:060. Refunds. Beau Barnes, deputy executive secretary of operations and general counsel, represented the system.

Mr. Barnes requested to defer consideration of this administrative regulation to the May subcommittee meeting. A motion was made and seconded to defer consideration of this administrative regulation. Without objection, and with agreement of the agency, the deferral request was approved.

FINANCE CABINET: Department for Facilities and Support Services: State-Owned Buildings and Grounds

200 KAR 3:020 & E. Use of State-owned facilities and grounds.

BOARDS AND COMMISSIONS: Board of Accountancy

201 KAR 1:290. Standards of practice.

201 KAR 1:310. Expungement of minor violation.

Board of Social Work

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

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Board of
Emergency Medical Services

202 KAR 7:520. Allocation of block grant funding assistance for emergency
medical services.

202 KAR 7:575. Posting of fee schedules of licensed ambulance providers.

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

601 KAR 2:030 & E. Ignition interlock.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky
Board of Education: Department of Education: Academic Standards

704 KAR 8:060. Required academic standards for social studies.

LABOR CABINET: Department of Workplace Standards: Department of Workers'
Claims

803 KAR 25:270 & E. Pharmaceutical formulary.

PUBLIC PROTECTION CABINET: Department of Insurance: Surplus Lines

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

Kentucky Department of Financial Institutions: Administration

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

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

902 KAR 20:111. Medically managed intensive inpatient withdrawal management.

Department of Medicaid Services: Division of Policy and Operations: Medicaid
Services

907 KAR 1:022. Nursing facility services and intermediate care facility for
individuals with an intellectual disability.

907 KAR 1:330. Hospice services.

907 KAR 1:340. Reimbursement for hospice services.

907 KAR 1:441. Repeal of 907 KAR 001:436.

907 KAR 1:755. Preadmission Screening and Resident Review Program.

Department of Medicaid Services: Division of Program Integrity

907 KAR 5:005. Health Insurance Premium Payment (HIPP) Program. Jonathan Scott, regulatory and legislative liaison, represented the division. Lili Lutgens, licensed attorney and licensed clinical social worker, Therapeutic Intervention Services, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair West, Ms. Lutgens stated that Therapeutic Intervention Services was opposed to this administrative regulation because several changes were needed. Many states had adopted the Health Insurance Premium Payment (HIPP) Program, which was a successful and important program. Most of these situations involved children who had been determined by a medical review panel to be permanently disabled and qualified for Medicaid but with parents who additionally had access to employer-provided healthcare. By making this program mandatory, recipients could be punished because failure to comply with narrow deadlines could cause a termination of Medicaid benefits. This was another instance that created uncertainty for Kentucky health care providers and, in some cases, disincentivized providers from participating in the Medicaid program. Individuals who participated in the supports for community living waiver program were especially at risk because they could additionally lose housing funding if their benefits were terminated. Billing private insurance before Medicaid was administratively complicated. Ms. Lutgens requested that the division work with stakeholders to correct some of these problems.

Mr. Scott requested to defer consideration of this administrative regulation to the May subcommittee meeting. A motion was made and seconded to defer consideration of this administrative regulation. Without objection, and with agreement of the agency, the deferral request was approved.

Department for Behavioral Health, Developmental and Intellectual Disabilities:
Division of Behavioral Health: Substance Abuse

908 KAR 1:341. Repeal of 908 KAR 001:340.

908 KAR 1:370. Licensing procedures, fees, and general requirements for nonhospital-based alcohol and other drug treatment entities.

908 KAR 1:372. Licensure of residential alcohol and other drug treatment entities.

908 KAR 1:374. Licensure of nonhospital-based outpatient alcohol and other drug treatment entities.

Office for Children with Special Health Care Needs

911 KAR 1:010. Application to office for children with special health care needs clinical programs.

911 KAR 1:020. Billing and fees.

911 KAR 1:060. Office for children with special health care needs medical staff.

911 KAR 1:071. Repeal of 911 KAR 001:070 and 911 KAR 001:080.

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.

The subcommittee adjourned at 4:55 p.m. The next meeting of the subcommittee is tentatively scheduled for May 14, 2019, at 1 p.m.