

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the May Meeting

May 14, 2019

Call to Order and Roll Call

The May meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, May 14, 2019, at 1:00 PM, in Room 149 of the Capitol Annex. Representative David Hale, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Stephen West, Co-Chair; Representative David Hale, Co-Chair; Senators Julie Raque Adams, and Alice Forgy Kerr; Representatives Deanna Frazier, Mary Lou Marzian, and Tommy Turner.

Guests: Wayne Lewis, Cassie Trueblood, Education Professional Standards Board; Rosemary Holbrook, Personnel Cabinet; Beau Barnes, Teachers' Retirement Systems; Joe Donahue, State Board of Accountancy; Elizabeth Morgan, Board of Medical Imaging and Radiation Therapy; Philip Dietz, Ashley Powell, John Wood, Board of Emergency Medical Services; Steven Fields, Daniel Schulman, Karen Waldrop, Department of Fish and Wildlife Services; Jennifer Fraker, Lauren Gallicchio, Jennifer Stafford, Department of Education; Brian Black, Kristi Lowry, Labor Cabinet; Michael Swansburg, Robert Swisher, Department of Workers' Claims; Michael Mullins, Jim Vicini, Department of Natural Resources, Patrick O'Connor, Department of Insurance; Jonathan Scott, Department of Medicaid Services; Laura Begin, Kara Daniel, Todd Trapp, Department for Community Based Services; Rebecca Ingram, Richard Innes, Anne-Tyler Morgan, Carly Muetterties, Peter Naake, Seth Rosenhagen, Wesley Wei.

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, May 14, 2019, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

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 003:040, and 016 KAR 003:050. Wayne Lewis, commissioner, and Cassie Trueblood, policy advisor and counsel, represented the board.

A motion was made and seconded to approve the following amendment: to add the RELATES TO and STATUTORY AUTHORITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE, Sections 5 through 9, and material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 3 to add additional requirements and guidelines for advanced educational leadership-school principal and career and technical school principal applicants. Without objection, and with agreement of the agency, the amendments were approved.

PERSONNEL CABINET: Classified

101 KAR 2:034. Classified compensation administrative regulations. Mary Elizabeth Bailey, commissioner, Department of Human Resources and Administration, and Rosemary Holbrook, general counsel, represented the cabinet.

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

Unclassified

101 KAR 3:045. Compensation plan and pay incentives for unclassified service.

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

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

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

In response to a question by Co-Chair West, Mr. Barnes stated that revisions to this administrative regulation clarified, but did not substantively change, the process for re-funding members' accounts.

In response to a question by Representative Marzian, Mr. Barnes stated that the agency amendment expedited the process for a surviving beneficiary to obtain benefits due.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 4 and 5 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 4 to delete language pertaining to the time frame for processing a refund to a deceased member's estate. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: State Board of Accountancy

201 KAR 1:290. Standards of Practice. Joe Donohue, counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 1:300. Rules of professional conduct.

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

201 KAR 1:310. Expungement of minor violation.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, 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.

Board of Medical Imaging and Radiation Therapy

201 KAR 46:010. Definitions for 201 KAR Chapter 046. Elizabeth Morgan, executive director, represented the board.

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

201 KAR 46:020. Fees.

201 KAR 46:030. Education for medical imaging technologists, advanced imaging professionals, nuclear medicine technologists, radiographers, and radiation therapists.

201 KAR 46:040. Medical imaging technologist, advanced imaging professional, radiographer, nuclear medicine technologist, and radiation therapist licenses.

201 KAR 46:045. Temporary license application for medical imaging technologists, advanced imaging professionals, radiographers, nuclear medicine technologists, and radiation therapists.

201 KAR 46:081. Limited x-ray machine operator.

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. Philip Dietz, chair; Ashley Powell, vice chair; and John Wood, counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph; Sections 1 through 3, 5, 6, and 10; and material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 2 to clarify that all awarded grant funds, except approved carry-over funds, shall be expended by June 30 of the fiscal year of award. Without objection, and with agreement of the agency, the amendments were approved.

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

In response to questions by Co-Chair Hale, Mr. Powell stated that the fee schedule established in this administrative regulation included fees for air ambulance service. Those fees were posted to the ambulance provider's Web site and were available upon request, including upon request at the scene of an emergency. Fees varied depending on the distance from the scene of emergency to the medical facility or from medical facility to medical facility.

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

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

301 KAR 3:091. Repeal of 301 KAR 003:090. Steven Fields, staff attorney; Daniel Schulman, staff attorney; and Karen Waldrop, deputy commissioner, represented the department.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: Department of Education: Office of Instruction

704 KAR 3:303. Required Academic Standards. Jennifer Fraker, policy advisor; Lauren Gallicchio, social studies consultant; Wayne Lewis, commissioner; and Jennifer Stafford, director of assessment, represented the department. Rebecca Ingram, teacher, Jefferson County Public Schools; Carly Muetterties, executive director, Kentucky Council for the Social Studies; and Wesley Wei, student graduate, appeared in support of 704 KAR 8:060. Richard Innes, volunteer staff education analyst, Bluegrass Institute, appeared in opposition to 704 KAR 8:060.

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

Academic Standards

704 KAR 8:060. Required Academic Standards for Social Studies.

In response to a question by Co-Chair Hale, Mr. Lewis stated that this administrative regulation revised Kentucky's academic standards for social studies in accordance with Senate Bill 1 from the 2017 Regular Session of the General Assembly (SB1-2017), which required that Kentucky's academic standards be revised by Kentucky teachers and other stakeholders. By statute, Kentucky's curriculum, based on the academic standards framework, was developed at the school level, through school-based decision-making councils (SBDMs). Ms. Gallicchio stated that the proposed academic standards for social studies were divided into four (4) disciplines, including geography, civics, economics, and history. The studies were to be inquiry based, with a balance between skills and content. Ms. Fraker

stated that the academic standards for social studies were developed by the teacher-writer teams in careful adherence to the process requirements established in SB1-2017.

In response to a question by Co-Chair Hale, Mr. Innes requested that the subcommittee find this administrative regulation deficient because it was incomplete. He stated that the department needed to amplify this framework and provide clarifying details. The academic standards for social studies focused excessively on process, while lacking sufficient content. For example, neither Abraham Lincoln nor Dr. Martin Luther King Jr. were referenced, and terms such as “north pole,” “south pole,” and “equator” were absent. While SBDMs were tasked with developing curriculum, that curriculum was required to comply with the academic standards established in this administrative regulation. SBDMs needed much more guidance than this framework provided. SB1-2017 prohibited statewide assessments on standards not included in the academic standards approved by the Kentucky Board of Education; therefore, students would not be tested on material not included in this administrative regulation. Because curriculum was determined primarily based on assessments, important social studies components might not be taught. There were many nationally recognized disciplines beyond geography, civics, economics, and history, which were important to social studies, including anthropology, archaeology, the law, philosophy, political science, psychology, religion, sociology, and the humanities. SBDMs should be consistent across Kentucky regarding the basic components of social studies. Donnie Wilkerson, Kentucky’s 2011 History Teacher of the Year, who was unable to attend today’s subcommittee meeting, was opposed to this administrative regulation and believed some of the material was not age appropriate.

In response to a question by Co-Chair Hale, Ms. Muetterties stated that the Kentucky Council for the Social Studies supported this administrative regulation. These academic standards for social studies were written, revised, and supported by Kentucky teachers. These rigorous standards provided flexibility for inclusive content, rather than an exhaustive list of content standards, and criticism of the lack of content detail was misplaced. These standards served as a framework, constituting the goals for student learning, while curriculum was what was taught and how, based on these standards. Academic standards were not designed as a subject index. For example, the Next Generation Science Standards required considering the properties of water and how those properties affected the planet, but the standards did not reference “oxygen” or “hydrogen.” Social studies was more than memorizing a list of content. Mr. Wei stated that, as a 2017 Kentucky graduate, he supported this administrative regulation. Inquiry-based learning was a very important method for teaching social studies. Mr. Wei was majoring in Education Policy at Vanderbilt University in Nashville and became interested in pursuing this major as a result of being introduced to inquiry-based learning in Kentucky schools. He was interning at the Learning Policy Institute in Washington D.C., which focused on academic standards development, and he worked with the Kentucky Department of Education where he observed these academic standards for social studies being developed by teacher groups.

In response to a question by Co-Chair Hale, Ms. Ingram stated that, as an instructional coach in Jefferson County, she believed that the proposed academic standards for social studies would provide students with the tools necessary to shape the future. These standards were developed in accordance with SB1-2017. These standards allowed flexibility to develop unique learning experiences. Content details would develop inherently from the academic standards framework topics. For example, archeology would be a natural topic related to the academic standard of the development and rise of early civilizations. Factual information was easily attainable, but the ability to be problem solvers and to make choices based on an understanding of social studies was important. It was crucial to teach students how to think and problem solve.

In response to a question by Co-Chair Hale, Mr. Lewis stated that Mr. Innes made tremendous contributions to education in Kentucky, and he was highly respected for his concern regarding academic standards. The authority to develop curriculum through SBDMs was required by state law; therefore, the academic standards for social studies were developed accordingly.

In response to questions by Co-Chair West, Ms. Gallicchio stated that SB1-2017 established a step-by-step process for the development of academic standards. That process was adhered to by the development team. In January 2018, a public comment period was conducted regarding the current academic standards for social studies. Applications were accepted for teacher-writers to comprise the development team. New standards were developed between March and December 2018, including focus groups. The first draft was released through another public comment period. Comments were received, and revisions were made based on the public comments. The Interim Joint Committee on Education and the Kentucky Board of Education both reviewed the developing standards. Mr. Lewis stated that the standards were revised at each point in the process. The Interim Joint Committee on Education and the Kentucky Board of Education, pursuant to SB1-2017, provided oversight regarding the process of developing the standards. Ms. Fraker stated that this process actually began in 2013, and extensive public comments were considered during the development of these standards. The Standards and Assessment Process Review Committee also reviewed these standards. Mr. Lewis stated that there was a fundamental difference of agreement regarding assessment of content. Content may be part of an academic standard without being explicitly referenced. For example, it was difficult to imagine teaching a lecture on the American Civil Rights Movement without including information regarding Rosa Parks and Dr. Martin Luther King, Jr. Ms. Gallicchio stated that other states developed curriculum very differently than as required by Kentucky law. SB1-2017 specifically required fewer but more in-depth academic standards. Mr. Lewis stated that SBDM-determined curriculum varied significantly in quality across Kentucky. SBDMs received guidance, but more work was necessary to educate the SBDMs themselves. Ms. Fraker stated that there were numerous opportunities for professional development related to SBDMs.

In response to a question by Co-Chair Hale, Ms. Gallicchio stated that there was more emphasis on Kentucky-specific studies than in the previous academic standards for social studies.

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.

LABOR CABINET: Division of Occupational Safety and Health Compliance: Division of Occupational Safety and Health Education and Training

803 KAR 2:180. Recordkeeping, reporting, statistics. Brian Black, occupational safety and health standards specialist, and Kristi Lowry, occupational safety and health standards specialist, represented the division.

ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division of Mine Safety: Mining Safety Standards

805 KAR 3:100. Equipment use and operation. Michael Mullins, regulation coordinator, and Jim Vicini, director, represented the division.

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.

PUBLIC PROTECTION CABINET: Department of Insurance: Surplus Lines

806 KAR 10:030. Surplus lines reporting and tax payment structure. Patrick O'Connor, deputy commissioner, represented the department.

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.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Program Integrity

907 KAR 5:005. Health Insurance Premium Payment (HIPP) Program. Jonathan Scott, legislative and regulatory advisor, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph; Sections 2, 6, 8, and 15; and material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 5 to extend the deadline for reporting changes in health insurance coverage from ten (10) to thirty (30) days. Without objection, and with agreement of the agency, the amendments were approved.

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. Laura Begin, regulation coordinator; Kara Daniel, regulation coordinator; and Todd Trapp, assistant director, represented the division.

Other Business: Senator Kerr moved to nominate Senator Stephen West as Senate Co-Chair of the subcommittee. Senator Raque Adams seconded the motion and moved to cease nominations. Senator Kerr seconded that motion and, with acclimation and without objection, Senator West was elected Senate Co-Chair. Representative Marzian moved to nominate Representative David Hale as House Co-Chair of the subcommittee. Representative Turner seconded the motion. Representative Marzian moved to cease nominations. Representative Frazier seconded that motion and, with acclimation and without objection, Representative Hale was elected House Co-Chair.

The following administrative regulations were deferred or removed from the May 14, 2019, subcommittee agenda:

STATE BOARD OF ELECTIONS: Forms and Procedures

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

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 Social Work

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

ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division of Mine Permits: Bond and Insurance Requirements

405 KAR 10:001. Definitions for 405 KAR Chapter 010.

405 KAR 10:015. General bonding provisions.

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

601 KAR 2:030 & E. Ignition interlock.

LABOR DEPARTMENT: Department of Workers' Claims

803 KAR 25:270 & E. Pharmaceutical formulary. Michael Swansburg, deputy secretary and general counsel, and Robert Swisher, commissioner, represented the department. Anne-Tyler Morgan, attorney, Rx Development Associates, and Peter Naake, president, Kentucky Workers' Association, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair Hale, Ms. Morgan stated that Rx Development Associates was opposed to this administrative regulation because the requirement that drugs dispensed by an entity other than a pharmacist required prior authorization was beyond the jurisdiction of the department and the scope of this administrative regulation. Boards of licensure were authorized to establish who was authorized to dispense drugs. This administrative regulation should be revised to remove that requirement, which should be addressed by the appropriate board of licensure, rather than the department.

In response to a question by Co-Chair Hale, Mr. Naake stated that the Kentucky Workers' Association appreciated the department's effort in developing this complex policy but was opposed to this administrative regulation because an injured worker would not be given notice of a prescription denied based on prior authorization required by the formulary. This administrative regulation should be revised to add a requirement that the injured worker shall be given notice of a prescription denied based on prior authorization required by the formulary.

In response to a question by Co-Chair West, Mr. Naake stated that the law required a specific formulary for persons injured pursuant to workers' compensation. Ms. Morgan stated that every health plan had its own formulary.

In response to a question by Co-Chair Hale, Mr. Swisher thanked Mr. Naake and stated that an injured worker would know immediately if a prescription was denied based on prior authorization required by the formulary. The pharmacist would know prior to dispensing, and the prescriber would be notified of the denial and the reason for the denial.

In response to questions by Representative Marzian, Mr. Swisher stated that the formulary was internet-based and updated monthly, and notice was published if a drug on the formulary changed. The intent was to discourage prescription of non-preferred drugs

on the formulary and encourage prescription of therapeutically equivalent, preferred drugs. Mr. Swisher stated that the department was disinclined to defer consideration of this administrative regulation to the June meeting of the subcommittee.

In response to a question by Representative Frazier, Mr. Swisher stated that this administrative regulation did not establish who was authorized to prescribe certain drugs, but required prior authorization for drugs listed as nonpreferred on the formulary. This was a cost-control measure and an effort to reduce conflicts of interest in situations in which there might be compensation to a provider for prescribing nonpreferred drugs. Ninety (90) percent of drugs were dispensed by a pharmacy. These requirements were not overburdensome for a prescriber who was also a dispenser. Representative Frazier stated that the process for addressing prior authorization was inefficient.

In response to a question by Co-Chair Hale, Mr. Swisher stated that the department did not agree to defer consideration of this administrative regulation to the June meeting of the subcommittee.

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

Representative Marzian moved to find this administrative regulation deficient. Representative Turner seconded the motion. Prior to a roll call vote and notwithstanding his earlier refusal to defer, Mr. Swisher requested deferral of this administrative regulation to the June meeting of the subcommittee. Representative Marzian moved to withdraw the previous motion to find this administrative regulation deficient. Representative Turner seconded the motion. Without objection, and with agreement of the agency, the motion was approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Insurance Fraud

806 KAR 47:010. Fraud prevention.

806 KAR 47:021. Repeal of 806 KAR 047:020 and 806 KAR 047:030.

LABOR CABINET: 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

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 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.

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