

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the June Meeting

June 11, 2019

Call to Order and Roll Call

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

Present were:

Members: Senator Stephen West, Co-Chair; Representative David Hale, Co-Chair; Deanna Frazier, Mary Lou Marzian, and Tommy Turner.

Guests: Kate Ware, Higher Education Assistance Authority; Rob Akers, Amanda Ellis, Cassie Trueblood, Education Professional Standards Board; Cary Bishop, Department for Facilities and Support Services; Scott Majors, Dan Martin, Keith Poynter, Board of Physical Therapy; J. Shane Carrier, Karen Waldrop, Department of Fish and Wildlife Resources; B. Dale Hamblin, Robert Swisher, Department of Workers' Claims; Steve Humphress, Marc Manley, Department of Alcoholic Beverage Control; Patrick O'Connor, Department of Insurance; Duane Curry, Max Fuller, Tim House, Steven Milby, David Startzman, Department of Housing, Buildings and Construction; Stephanie Brammer-Barnes, Office of Inspector General; Julie Brooks, Lewis Ramsey, Department for Public Health; Jonathan Scott, Lee Guice, Department for Medicaid Services; Shellie May, Jonathan Borden, Office for Children with Special Health Care Needs; Peter Naake, Heidi Schissler.

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, June 11, 2019, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY: Division of Student and Administrative Services: KHEAA Grant Programs

11 KAR 5:145. CAP grant award determination procedure. Kate Ware, manager, Student Aid Branch, represented the division.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: Advanced Certification and Rank

16 KAR 8:030. Continuing education option for rank change. Rob Akers, associate commissioner, and Cassie Trueblood, policy advisor and counsel, represented the board.

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

FINANCE AND ADMINISTRATION CABINET: Department for Facilities and Support Services: State-owned Buildings and Grounds

200 KAR 3:020 & E. Use of State-owned facilities and grounds. Cary Bishop, staff attorney, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 1 to add definitions for “demonstration activities,” “normal business hours,” and “triggering events”; and (3) to amend Sections 2 through 4 to divide the event application form into five (5) separate forms to: (a) clarify when each applies; (b) exempt demonstration activities from the rental and lease portion of the form; and (c) allow state agencies to make specified adjustments to the rental and lease form for their own uses. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Physical Therapy

201 KAR 22:135. Fees. Scott Majors, executive director; Dan Martin, chair; and Keith Poynter, general counsel, represented the board.

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

301 KAR 2:030. Commercial guide license. Major J. Shane Carrier, Law Enforcement Division, and Karen Waldrop, deputy commissioner, represented the department.

In response to questions by Co-Chair West, Ms. Waldrop stated that changes to this administrative regulation included eliminating the hunting guide helper category. Hunting guide helpers would be able to become licensed as hunting guides by complying with the requirements established for hunting guides. Previous to this amendment, hunting guide

helpers had most of the same requirements as hunting guides. Additionally, a hunter who was hunting on land owned by another would be required to have in possession while hunting, identification and documentation of permission to hunt on that land, such as a letter of permission from the landowner or the landowner's phone number. Revocation of licensure due to state or federal violations of fishing and hunting requirements was changed from revocation from one (1) to three (3) years.

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.

LABOR CABINET: Department of Workers' Claims

803 KAR 25:270 & E. Pharmaceutical formulary. Dale Hamblin, Jr., assistant general counsel, and Robert Swisher, commissioner, represented the department. Peter Naake, president, Kentucky Workers' Association, appeared in support of the agency amendment to this administrative regulation.

In response to a question by Co-Chair West, Mr. Hamblin stated that the agency amendment to this administrative regulation required an injured employee to be notified of the preauthorization status for a prescribed "N" status drug. Mr. Naake thanked the department for adding the requirement. Representative Marzian, Co-Chair Hale, and Representative Frazier likewise thanked the department for reaching a compromise with stakeholders.

At the May 14, 2019, 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.

A motion was made and seconded to approve the following amendments: to amend Section 3 to: (1) require notification to an injured employee of the preauthorization requirement for an "N" status drug; (2) delete the provision that a prescription drug dispensed for outpatient use by any person other than a pharmacist requires preauthorization; and (3) comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Retail Premises

804 KAR 7:020. Alcoholic beverage inventory during prohibited alcoholic beverage sales period. Steve Humphress, general counsel, and Mark Manley, attorney, 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 and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

804 KAR 7:031. Repeal of 804 KAR 007:030.

Department of Insurance: Surplus Lines

806 KAR 10:051. Repeal of 806 KAR 010:050. Patrick O'Connor, deputy commissioner, represented the department.

PUBLIC PROTECTION CABINET: Department of Housing, Buildings and Construction: Division of Building Code Enforcement

815 KAR 7:120. Kentucky Building Code. Duane S. Curry, director of building codes; Steven Milby, commissioner; and David Startzman, general counsel, represented the division.

Co-Chair West thanked the division for working with industry stakeholders in the development of these administrative regulations.

815 KAR 7:125. Kentucky Residential Code.

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. Stephanie Brammer – Barnes, regulation coordinator, represented the division.

In response to a question by Co-Chair West, Ms. Brammer – Barnes stated that an on-staff physician who was an employee of the facility or a contracted physician would satisfy the requirement for at least one (1) physician per facility with the ability to prescribe drugs approved by the FDA for the treatment of opioid use disorder if the on-staff physician or contracted physician had a DEA waiver to prescribe the types of drugs used for opioid use disorder.

Department of Public Health: Division of Public Health and Safety: Milk and Milk Products

902 KAR 50:101. Repeal of 902 KAR 050:100. Julie Brooks, regulation coordinator, and Lewis Ramsey, branch manager, Milk Safety Branch, represented the division.

In response to questions by Co-Chair West, Ms. Brooks stated that 902 KAR 50:110 updated milk sanitation requirements commensurate with the current Pasteurized Milk Ordinance. Mr. Ramsey stated that these requirements pertained to dairy farms.

902 KAR 50:110. Grade A milk and milk products standards and Grade A milk sanitation requirements.

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. Lee Guice, director of policy and operations, and Jonathan Scott, regulation coordinator, represented the division. Heidi Schissler, legal director, Kentucky Protection and Advocacy, appeared in opposition to 907 KAR 1:755.

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.

In response to questions by Co-Chair West, Mr. Scott stated that the Preadmission Screening and Resident Review Program (PASRR) administrative regulation included MAP form 409, which was incorporated by reference. The division received public comments that expressed concerns that MAP form 409 was confusing and did not conform to federal requirements. The division agreed that a person might have substantial functional limitations as a qualifying characteristic without an intellectual ability and vice versa, or a person might have both. Ms. Schissler stated that PASRR was a federal requirement for any Medicaid-certified nursing facility. Before each person was admitted to a Medicaid-certified nursing facility, the screening would be used to determine if the person had any mental illness or intellectual disability or related condition. Kentucky Protection and Advocacy was concerned that MAP form 409 did not accurately reflect federal screening requirements because of the way in which the factors were conjoined. Ms. Schissler requested that the form be amended to more accurately reflect the federal screening requirements. Misunderstanding of the requirements as paraphrased on the form led to at least two (2) patients with cerebral palsy not getting necessary specialized services, having their conditions deteriorate, and being admitted to nursing homes. Ms. Guice stated that the PASRR Technical Advisory Committee (PTAC) determined that the current version of MAP form 409 was adequate. PTAC allowed the form to use lay language for ease of interpretation

and use, which was the intention regarding how the factors were conjoined on the form. Mr. Scott stated that the amended administrative regulation intended to add flexibility and make the form easier to interpret and use. Ms. Schissler stated that the federal definition itself had remained constant for many years.

In response to questions by Co-Chair Hale, Ms. Schissler requested that the MAP form 409, incorporated by reference in this administrative regulation, be amended to more accurately reflect the federal screening requirements. Mr. Scott stated that PTAC found the current language in the MAP form 409 adequate.

In response to questions by Representative Marzian, Ms. Guice stated that it was not possible to determine if patients other than the two (2) cited had specialized services denied due to misinterpretation of the form. Each month, approximately 1,200 Medicaid recipients applied for long-term care services. Ms. Schissler stated that the form could be amended to more accurately reflect federal requirements while still using easy to interpret, lay language. The federal government contracted with PTAC to provide guidance on PASRR issues. Representative Marzian requested that the division work with Kentucky Protection and Advocacy to consider developing an amendment for consideration once this administrative regulation was referred to the Interim Joint Committee on Health, Welfare, and Family Services. Co-Chair West reiterated Representative Marzian's request, and Mr. Scott and Ms. Guice agreed to consider an amendment for the Interim Joint Committee on Health, Welfare, and Family Services.

Office for Children with Special Health Care Needs

911 KAR 1:010. Application to office for children with special health care needs clinical programs. Jonathan Borden, regulation coordinator, and Shellie May, executive director, represented the office.

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

STATE BOARD OF ELECTIONS: Forms and Procedures

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

BOARDS AND COMMISSIONS: Board of Dentistry

201 KAR 8:581. Charity dental practices.

Board of Ophthalmic Dispensers

201 KAR 13:040. Licensing.

201 KAR 13:050. Apprentices.

201 KAR 13:055. Continuing education requirements.

201 KAR 13:060. Military service; reciprocity; endorsement.

Board of Social Work

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

KENTUCKY LOTTERY CORPORATION

202 KAR 3:010. Code of ethics.

**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.

JUSTICE AND PUBLIC SAFETY CABINET: Asset Forfeiture

500 KAR 9:011. Repeal of 500 KAR 009:010, 500 KAR 009:020, 500 KAR 009:030, and 500 KAR 009:040.

Motorcycle Safety Education Commission

500 KAR 15:010 & E. Motorcycle safety education program.

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

601 KAR 2:030 & E. Ignition interlock.

PUBLIC PROTECTION CABINET: Department of Insurance: Agents, Consultants, Solicitors, and Adjustors

806 KAR 9:001. Prelicensing courses of study.

806 KAR 9:020. False or deceptive names, titles, prohibited.

806 KAR 9:061. Repeal of 806 KAR 009:060.

806 KAR 9:070. Examinations.

806 KAR 9:310. Life settlement licenses.

806 KAR 9:321. Repeal of 806 KAR 009:320.

Insurance Fraud

806 KAR 47:010. Fraud prevention.

Surplus Lines

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

ENERGY AND ENVIRONMENT CABINET: Public Service Commission: Utilities

807 KAR 5:056. Fuel adjustment clause.

PUBLIC PROTECTION CABINET: Department of Financial Institutions: Administration

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

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Epidemiology and Health Planning: Communicable Diseases

902 KAR 2:070. Rabies control.

Division of Public Health Protection and Safety: Mobile Homes and Recreational Vehicles Parks; Facilities Standards

902 KAR 15:010. Manufactured and mobile homes.

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

902 KAR 20:036. Operation and services; personal care homes.

Food and Cosmetics

902 KAR 45:065. Tattooing.

902 KAR 45:070. Body piercing and ear piercing.

902 KAR 45:075. Tanning facilities.

Department of Medicaid Services: Division of Policy and Operations

907 KAR 1:604 & E. Recipient cost-sharing.

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.

Department for Aging and Independent Living: Division of Guardianship: Guardianship

910 KAR 2:020. Referral process for adult guardianship.

Department for Community Based Services: Division of Protection and Permanency: Family Support

922 KAR 1:310 & E. Standards for child-placing agencies.

922 KAR 1:350 & E. Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers.

922 KAR 1:495 & E. Training requirements for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet.

The subcommittee adjourned at 1:50 p.m. The next meeting of the subcommittee is tentatively scheduled for July 10, 2019, at 10 a.m.