

# **ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**

## **Minutes of the September Meeting**

**September 16, 2019**

### **Call to Order and Roll Call**

The September meeting of the Administrative Regulation Review Subcommittee was held on Monday, September 16, 2019, at 10:00 AM, 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, Perry B. Clark, and Alice Forgy Kerr; Representatives Deanna Frazier, Mary Lou Marzian, and Tommy Turner.

Guests: Rosemary Holbrook, Personnel Cabinet; Todd Renner, Department of Revenue; Ryan Barrow, Office of Financial Management; Anthony Grey, Larry Hadley, Board of Pharmacy, Marc Manley, Board of Cosmetology; David Trimble, Board of Embalmers and Funeral Directors; Ron Brooks, Brent McCarty, Steven Phillips, Paul Wikes, Karen Waldrop, Department of Fish and Wildlife Resources; Jason Glass, Clint Quarles, Department of Agriculture; Sean Alteri, Amanda LeFevre, Department of Environmental Protection; Amy Barker, Brandon Lynch, Department of Corrections; William Codell, Lori Bradbury-Robinson; Tamara Hart, Elise Marti, Department of Juvenile Justice; Todd Allen, Steve Lyles, Department of Education; Michael Nemes, Bridget Papalia, Brooken Smith, Education and Workforce Development Cabinet; Joe Donohue, Department of Financial Institutions; Erica Brakefield, Julie Brooks, Leanna Caven, Frank Jackson, Devon McFadden, Department for Public Health; Stephanie Brammer-Barnes, Steven Davis, Office Inspector General; Jonathan Scott, Department for Medicaid Services; Shannon Gadd, Jessica Wayne, Tonia Wells, Department for Aging and Independent Living; Erika Bauford, Laura Begin, Kristy Kidd, Department for Community Based Services; Shawn Cox, William Dolan, Jon Dougherty, Ankur Gopal, Betsy Johnson, Joe Jurgensen, Marc Wilson, Ron Wolf.

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

The Administrative Regulation Review Subcommittee met on Monday, September 16, 2019, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

PERSONNEL CABINET: Classified

101 KAR 2:102. Classified leave general requirements. Mary Elizabeth Bailey, commissioner, and Rosemary Holbrook, general counsel, represented the cabinet.

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

Unclassified

101 KAR 3:015. Leave requirements for unclassified service.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Sales and Use Tax; Registration and Collection

103 KAR 25:131. Current month accelerated payment of sales and use taxes by larger taxpayers. Todd Renner, executive director, Office of Tax Policy and Regulation, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 5, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Sales and Use Tax; Service and Professional Occupations

103 KAR 26:070. Contractors.

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 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.

103 KAR 26:090. Veterinarians and pet care providers.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1 through 4, 7, 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.

Sales and Use Tax; Miscellaneous Retailer Occupations

103 KAR 27:180. Vending machines.

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

Sales and Use Tax; Miscellaneous Retail Transactions

103 KAR 28:010. Admissions.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1 through 4 and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Sales and Use Tax; General Exemptions

103 KAR 30:170. Containers, wrapping, and packing materials.

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

Selective Excise Tax; Cigarettes

103 KAR 41:220. Applications, stamp orders, returns, reports, and statements to be filed electronically – waiver.

In response to a question by Co-Chair Hale, Mr. Renner stated that this administrative regulation did not adjust the cigarette tax. This administrative regulation required cigarette vendors to report tax information electronically in order to improve efficiency.

Office of Financial Management: State Investment Commission

200 KAR 14:201. Repeal of 200 KAR 014:200. Ryan Barrow, executive director, represented the commission.

## BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:165. Transfer of prescription information. Anthony Gray, general counsel, and Larry Hadley, executive director, represented the board.

## Board of Cosmetology

201 KAR 12:030. Licensing, permits, and examinations. Marc Manley, counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph, Sections 9 through 11 and 20, and material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 14 to authorize a designee of the board inspector and board administrator to conduct an inspection of a school. Without objection, and with agreement of the agency, the amendments were approved.

## Board of Embalmers and Funeral Directors

201 KAR 15:010. Definitions. David Trimble, general counsel, represented the board.

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

201 KAR 15:015. Per Diem compensation of board members.

201 KAR 15:030. Fees.

In response to questions by Representative Marzian, Mr. Trimble stated that fee increases applied to licensees and funeral establishments. Fee increases ranged from twenty-five (25) dollars to fifty (50) dollars yearly, which raised fees to the statutory caps.

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

201 KAR 15:040. Examination.

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

201 KAR 15:050. Apprenticeship and supervision requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 4, and 6 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.

201 KAR 15:080. Complaints.

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.

201 KAR 15:110. Funeral establishment criteria.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph; Sections 1 through 3, 5, 7, 10, and 11; 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.

201 KAR 15:120. Requirements for applicants holding a license in another state.

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

201 KAR 15:125. Surface Transportation Permit.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph; Sections 1 through 3 and 5; and material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A; and (2) to add a section to establish a renewal process and renewal fee for a Surface Transportation Permit. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 1:185. Pay lakes. Ron Brooks, director, Fisheries Division; Brent McCarty, branch manager, Recruitment, Retention, and Reactivation Branch; Steven Phillips, staff attorney; and Karen Waldrop, deputy commissioner, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to comply with the drafting requirements of KRS Chapter 13A; and (2) to make technical changes to the agency contact information. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 1:201. Taking of fish by traditional fishing methods.

A motion was made and seconded to approve the following amendments: to make technical changes to the agency contact information. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 1:410. Taking of fish by nontraditional fishing methods.

A motion was made and seconded to approve the following amendments: to make technical changes to the agency contact information. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT: Department of Agriculture: Kentucky Grain  
Insurance and Grain Dealers

302 KAR 34:011. Repeal of 302 KAR 034:010, 302 KAR 034:020, 302 KAR 034:030, 302 KAR 034:040, 302 KAR 034:050, and 302 KAR 034:060. Jason Glass, director, and Clint Quarles, staff attorney, represented the department.

Grain Storage

302 KAR 35:011. Repeal of 302 KAR 035:020, 302 KAR 035:030, 302 KAR 035:040, 302 KAR 035:050, 302 KAR 035:060, and 302 KAR 035:070.

Bond and Grain Fund Distribution

302 KAR 36:011. Repeal of 302 KAR 036:010.

Regulation and Inspection; Packaging and Labeling

302 KAR 75:130. Packaging and labeling.

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

Regulation and Inspection; Method of Sale

302 KAR 76:100. Method of sale.

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

Regulation and Inspection; Scanner

302 KAR 80:010. Examination procedure for price verification.

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.

Regulation and Inspection; Commercial Weighing and Measuring Devices

302 KAR 81:010. Technical requirements for commercial weighing and measuring devices.

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

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Water Quality

401 KAR 5:010. Operation of wastewater systems by certified operators. Sean Alteri, deputy commissioner, and Amanda LeFevre, director, represented the division.

Water Quality Certification

401 KAR 8:030. Water treatment plant and water distribution system classification and staffing.

401 KAR 8:050. Drinking water program fees.

Certified Operators

401 KAR 11:001. Definitions for 401 KAR Chapter 011.

401 KAR 11:030. Wastewater treatment and collection system operators; classification and qualifications.

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

401 KAR 11:040. Water treatment and distribution system operators; classification and qualifications.

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

401 KAR 11:050. Operator and training provider certification.

401 KAR 11:060. Operator and training provider certification fees.

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

501 KAR 6:110. Roederer Correctional Complex. Amy Barker, assistant general counsel, and Brandon Lynch, program administrator, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 1 and Policy 16-01-01 to revise inmate visiting procedures, including: (1) establishing a two (2) hour limit for permanent inmates; (2) specifying that accepting additional visitors shall not restart the time limit; (3) prohibiting visitor movement during count times; (4) increasing the number of night-visit inmates from fifteen (15) to twenty-one (21); and (5) replacing a set time for night visits with a posted time. Without objection, and with agreement of the agency, the amendments were approved.

Department of Juvenile Justice: Child Welfare



505 KAR 1:160. Department of Juvenile Justice Policy and Procedures Manual: juvenile sexual offender treatment program. William Codell, attorney; Lori Bradbury – Robinson, licensed psychologist and program administrator; Tamara Hart, licensed psychological associate; and Elise Marti, staff attorney, represented the department.

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

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

701 KAR 5:090. Teacher disciplinary hearings. Todd Allen, deputy general counsel, represented the office.

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

Office of District Support Services: School Administration and Finance

702 KAR 3:130. Internal accounting.

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.

Apprenticeship Standards

787 KAR 3:010. Registration of apprenticeship programs. Michael Nemes, deputy secretary; Bridget Papalia, general counsel; and Brooken Smith, chief of staff, represented the department. Shawn Cox, director of external affairs, Ion Apex Electric; Jon Dougherty, education director, AMTECK; Ankur Gopal, CEO, Interapt LLC; Marc Wilson, Top Shelf Lobby, LLC and Associated Builders and Contractors; and Ron Wolf, director of external relations, AGC of Kentucky, appeared in support of this administrative regulation.

In response to a question by Co-Chair Hale, Mr. Nemes stated that changes applied to the Registered Apprenticeship Program only. This did not affect licensing policy and was a superior training program. Businesses were having difficulty finding skilled workforces, especially in the areas of electrical work, carpentry, and plumbing. Kentucky

apprenticeship requirements were burdensome and hindered developing the needed skilled workforces. The Registered Apprenticeship Program established safe and efficient training.

In response to a question by Co-Chair Hale, Mr. Smith stated that these changes adjusted journeyworker to apprentice ratio requirements. The proposed baseline ratio would be one (1) apprentice per journeyworker and authorized a second apprentice once the first had over 2,000 on-the job experience hours. Only low and medium-risk occupations were eligible for the ratio modifications. Changes did not impact more stringent employer requirements or collective bargaining agreements that established different ratios.

In response to a question by Co-Chair Hale, Mr. Gopal stated that the Registered Apprenticeship Program was a successful model for developing a workforce with the needed aptitude. This model allowed Interapt LLC to remain in Louisville, rather than the company seeking a workforce elsewhere.

In response to a question by Co-Chair Hale, Mr. Wilson stated that Top Shelf Lobby, LLC, supported the Registered Apprenticeship Program because this was the exact remedy needed to solve Kentucky's workforce crisis.

In response to a question by Co-Chair Hale, Mr. Cox stated that Ion Apex Electric supported the Registered Apprenticeship Program because the shortage of skilled workers in the trades was becoming more pronounced. This was a step forward to alleviate the shortage and provide quality career paths.

In response to a question by Co-Chair Hale, Mr. Wolf stated that AGC of Kentucky supported the Registered Apprenticeship Program because American economic leadership depended on a skilled workforce, especially in the commercial construction industry.

In response to a question by Co-Chair Hale, Mr. Dougherty stated that AMTECK was concerned that Kentucky law allowed, except for prevailing wage or state-funded projects, an unrestricted number of unlicensed electrical workers as long as there was at least one (1) licensed electrician. The Registered Apprenticeship Program would incentivize companies to more appropriately train employees.

Representative Frazier stated that she fully supported the Registered Apprenticeship Program.

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

Department of Financial Institutions: Administration

808 KAR 1:170. Licensing and registration. Joe Donohue, general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 1 through 4, 8, 10, and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Check Cashing

808 KAR 9:050. Licensee change of control.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Public Health Protection and Safety: Public Accommodations

902 KAR 7:010. Hotel and motel code. Erica Brakefield, section supervisor; Julie Brooks, regulation coordinator; and Leanna Caven, program evaluator, represented the division.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 4 through 9, 14, 16 through 18, 20, 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.

Department for Public Health: Division of Prevention and Quality Improvement: Programs for the Underserved

902 KAR 21:020. Kentucky Colon Screening Program. Julie Brooks, regulation coordinator, Devon McFadden, director, represented the division.

Division of Public Health Protection and Safety: Milk and Products

902 KAR 50:003. Repeal of 902 KAR 050:002. Julie Brooks, regulation coordinator, and Frank Jackson, program evaluator, represented the division.

902 KAR 50:005. Milk Advisory Committee.

Office of Inspector General: Division of Audits and Investigations: Controlled Substances

902 KAR 55:120. Disposal of prescription controlled substances. Stephanie Brammer – Barnes, regulation coordinator; Steve Davis, inspector general; and Jill Lee, pharmacist consultant, represented the division.

Department for Medicaid Services: Division of Fiscal Management: Hospital Service Coverage and Reimbursement

907 KAR 10:830 & E. Acute care inpatient hospital reimbursement. Jonathan Scott, regulatory and legislative advisor, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1, 2, and 7 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Section 7 to clarify that Worksheet B is part of the CMS 2552 cost report; and (3) to amend Sections 2 and 7 to require, effective beginning May 10, 2019, pursuant to federal approval, that the department shall make the annual IME payment to state university teaching hospitals and provide a supplemental DGME payment for the direct costs of graduate medical education incurred by eligible in-state hospitals. Without objection, and with agreement of the agency, the amendments were approved.

Department for Aging and Independent Living: Division of Guardianship

910 KAR 2:040. Service provisions for adult guardianship. Shannon Gadd, commissioner; Jessica Wayne, assistant director; and Tonia Wells, director, represented the division. William Dolan, attorney, Kentucky Protection and Advocacy, appeared in opposition to this administrative regulation.

In response to a question by Representative Frazier, Ms. Wells stated that DNR orders and end-of-life decisions were person centered and physician directed. Family were notified and given an opportunity to provide feedback. If there was a conflict, guardianship procedures were discussed. At least two (2) physicians were included in the process.

In response to a question by Co-Chair Hale, Mr. Dolan stated that Kentucky Protection and Advocacy was concerned that guardian visits were going from four (4) required visits to just one (1). Guardians previously were required to procure services, while the new provisions were more of a sign off on case manager decisions. Kentucky Protection and Advocacy also had concerns regarding birth control provisions. Only one (1), rather the previous two (2) physicians, was required for a DNR situation.

In response to a question by Co-Chair Hale, Ms. Gadd stated that the change in guardian visit requirements was for the purposes of adding flexibility. Individuals under guardianship were under a wide variety of situations. The securing of services component

was for compliance with the nationally recognized Uniform Act. Ms. Wells stated that birth control was a medical decision and medical decisions were made by guardians. These were physician based for various health reasons. Ms. Gadd and Ms. Wells stated that the change in the number of physicians required for a DNR was an access issue, especially in rural areas where it was difficult to timely consult two (2) physicians.

Co-Chair Hale encouraged the agency to continue dialogue with Mr. Dolan.

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

Department for Community Based Services: Division of Protection and Permanency: Child Welfare

922 KAR 1:470. Central registry. Erika Bauford, section supervisor; Laura Begin, regulation coordinator; and Kristy Kidd, adoption specialist, represented the division.

Child Welfare

922 KAR 1:560. Putative father registry and operating procedures.

A motion was made and seconded to approve the following amendments: to amend material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

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

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

The following administrative regulations were deferred or removed from the September 16, 2019, subcommittee agenda:

COUNCIL ON POST SECONDARY EDUCATION: Nonpublic Colleges

13 KAR 1:020. Private college licensing.

STATE BOARD OF ELECTIONS: Forms and Procedures

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

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

102 KAR 1:032. Bona Fide Retirement.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:095. Pharmacist interns.

Board of Dentistry

201 KAR 8:540. Dental practices and prescription writing.

Real Estate Authority: Real Estate Commission

201 KAR 11:002. Repeal of 201 KAR 011:030, 201 KAR 011:045, 201 KAR 011:062, 201 KAR 011:090, 201 KAR 011:095, 201 KAR 011:100, 201 KAR 011:110, 201 KAR 011:115, 201 KAR 011:135, 201 KAR 011:145, 201 KAR 011:147, 201 KAR 011:175, 201 KAR 011:180, 201 KAR 011:195, 201 KAR 011:215, 201 KAR 011:225, 201 KAR 011:230, 201 KAR 011:232, 201 KAR 011:235, 201 KAR 011:240, 201 KAR 011:245, 201 KAR 011:250, 201 KAR 011:300, 201 KAR 011:350, 201 KAR 011:400, 201 KAR 011:410, 201 KAR 011:440, 201 KAR 011:450, and 201 KAR 011:460.

Real Estate Commission

201 KAR 11:011. Definitions for 201 KAR Chapter 011.

201 KAR 11:105. Advertising.

201 KAR 11:121. Standards of professional conduct.

201 KAR 11:170. Education provider requirements.

201 KAR 11:190. Consumer and administrative complaints; discipline; administrative hearings.

201 KAR 11:210. Licensing, education, and testing requirements.

201 KAR 11:220. Errors and omissions insurance requirements.

201 KAR 11:461. Repeal of 201 KAR 011:420.

## Real Estate Appraisers

201 KAR 30:130. Education provider, instructor, and course. Tony Cotto, executive advisor, Public Protection Cabinet, and Marc Manley, acting general counsel, represented the board.

In response to a question by Co-Chair Hale, Mr. Manley requested that this administrative regulation be deferred to the October meeting of the subcommittee. Without objection, and with agreement of the agency, this administrative regulation was deferred.

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

301 KAR 2:185. Hunter education. Ron Brooks, director, Fisheries Division; Brent McCarty, branch manager, Recruitment, Retention, and Reactivation Branch; Steven Phillips, staff attorney; and Karen Waldrop, deputy commissioner, represented the department.

In response to questions by Representative Turner, Mr. McCarty stated that twenty-two (22) other states authorized hunter certification without an in-person course or range day. The department reached out to those states and, of those who responded, data indicated an increased number of certified hunters and a decrease in adverse hunting-related incidents. This administrative regulation would allow hunters to become certified via on-line courses. Because on-line certification would be convenient, previously exempt landowners hunting on their own property and born on or after January 1, 2002, would be required to be certified. Live-fire training for hunter certification would be optional, rather than mandatory.

Representative Turner stated that he was opposed to this policy because, during a time of debate regarding gun violence in America, the department might be taking away the one (1) chance many youth would have for live-fire training pertaining to firearm safety. In response, Ms. Waldrop stated that many in-person course and range days provided little in-depth firearm handling. For example, firing an air rifle at a state fair would qualify for hunter certification. Often a youth would only handle a firearm once or twice at an in-person course or range day. The department intended to establish a more rigorous in-person course or range day for those hunters who so opted. Hunters could bring their personal firearms in order to gain better training regarding the circumstances they might encounter. Courses could be made better if there were fewer of them. Representative Turner stated that the department seemed to be suggesting that a hunter could be more acclimated to firearms through an on-line experience, rather than an in-person course or range day. In response, Ms. Waldrop stated that the on-line course was focused on firearm safety and other hunter safety issues, rather than firearm handling. Representative Turner

stated that it seemed almost superfluous to require hunter certification at all without the live-fire handling component.

In response to a question by Representative Turner, Ms. Waldrop stated that the department was not making this proposal in order to procure federal matching funds, rather to remove barriers to hunter certification. Travel, time, and cost had become barriers to attaining hunter certification. An in-person course or range day would still be available for those who opted to attend. These courses would be more rigorous than many current events. Representative Turner stated that the live-fire requirement could save lives. In response, Mr. McCarty stated that, based on data that indicated that on-line courses reduced adverse hunting-related incidents, the failure to remove the requirement could itself result in adverse hunting-related incidents. Indiana had been implementing a similar policy since 2004 and had a decrease in adverse hunting-related incidents. The choice was between firearm training and quality firearm training. Ms. Waldrop stated that it was the goal of the department to properly train hunters and increase hunting opportunities.

In response to questions by Representative Frazier, Mr. McCarty stated that initially the department expected to lose money as a result of this policy because federal matching funds were not available for donated courses. The NRA had donated a free on-line course. Since that time, it was determined that federal matching funds could be used for donated courses. Ms. Waldrop stated that the department expected funding levels pursuant to this policy to be similar to previous levels and funding was not a component in the department's decisions regarding this policy. The department expected the policy to encourage more people to become hunter certified. Mr. McCarty stated that the other states that had implemented this policy initially experienced an upsurge in certifications due to noncompliant hunters opting to become certified due to the added convenience. The uptick was not necessarily due to new hunters. Typically, fifty (50) percent of hunters seeking certification still opted to take the in-person course or range day.

In response to questions by Co-Chair West, Ms. Waldrop stated that landowners hunting on their own property were previously exempt from hunter certification requirements. This policy change would require hunter certification for landowners hunting on their own land; however, it would only apply to those born on or after January 1, 2002. Mr. McCarty stated that these policy changes had significant support from stakeholders. Data indicated that on-line hunter certification resulted in more certified hunters and fewer adverse hunting-related incidents. Typically, most states experienced about a fifty (50) percent decrease in attendance of the in-person courses or range days. Ms. Waldrop stated that in-person courses and range days would still be available and would be more rigorous than in the past.

In response to a question by Representative Turner, Ms. Waldrop stated that, when she testified that federal matching funds were not an issue, the intention of the statement was that federal matching funds were not an issue in the policy-making decision. The



department did expect federal matching funds. Mr. McCarty stated that the decision was based on increasing safety, even to the point when the department expected to lose money, although that was not now the case.

Representative Turner stated that it was important for every youth to have as much training in hunter safety as possible, especially with the level of gun violence in America. This policy would undermine youth hunter safety training. Representative Turner stated that, in good conscience, he could not support this policy. Many youth did not have mentoring regarding firearm safety. It was troubling that an agency would be insensitive to concerns regarding youth safety pertaining to firearms.

Representative Turner made a motion, seconded by Senator Raque Adams, to find this administrative regulation deficient. In response to a question by Co-Chair Hale, Ms. Waldrop requested that this administrative regulation be deferred to the October meeting of the subcommittee and asked the grounds for the finding of deficiency. Representative Turner withdrew the motion to find this administrative regulation deficient and stated that KRS 13A.030(2)(a) authorized the subcommittee to make a nonbinding determination of deficiency and, in this case, the basis was safety concerns. In response to a question by Representative Turner, Ms. Waldrop stated that the commission and sportsmen would need to know the safety concerns basis for a nonbinding determination of deficiency. A motion was made and seconded to defer consideration of this administrative regulation to the October subcommittee meeting. Without objection, and with agreement of the agency, this administrative regulation was deferred.

Co-Chair Hale stated that, while not questioning the department's motive, the perception of this policy seemed unappealing at this time. In response to a question by Senator Clark, staff stated that, if this administrative regulation was deemed deficient by this subcommittee, the Governor would be contacted in accordance with KRS 13A.330. The second committee that would consider this administrative regulation was expected to be the Natural Resources and Energy Committee. Co-Chair West stated that public perception and timing were concerns regarding this administrative regulation. Any administrative regulation should represent the intent of the General Assembly, and the intent of the General Assembly seemed to be, generally, toward more, rather than less firearm education.

A motion was made and seconded to approve the following amendments: to make technical changes to the agency contact information. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Water Wells

401 KAR 6:001 & E. Definitions for 401 KAR Chapter 006.

401 KAR 6:211. Repeal of 401 KAR 006:200.

401 KAR 6:310 & E. Water supply well construction practices and standards.

401 KAR 6:320 & E. Certification of water well drillers and water well driller assistants.

401 KAR 6:350 & E. Monitoring well construction practices and standards.

#### Water Quality Standards

401 KAR 10:001. Definitions for 401 KAR Chapter 010.

401 KAR 10:026. Designation of uses of surface waters.

401 KAR 10:029. General provisions.

401 KAR 10:030. Antidegradation policy implementation methodology.

401 KAR 10:031. Surface water standards.

#### Division for Air Quality: Attainment and Maintenance of the National Ambient Air Quality Standards

401 KAR 51:010. Attainment status designations.

#### 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.

#### Office of the Secretary

501 KAR 6:060. Northpoint Training Center.

501 KAR 6:140. Bell County Forestry Camp.

#### TRANSPORTATION CABINET: Department of Vehicle Licensing: Driver Improvement

601 KAR 13:090. Medical Review Board; basis for examination, evaluation, tests.

601 KAR 13:100. Medical standards for operators of motor vehicles.

ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources:  
Division of Oil and Gas

805 KAR 1:001. Definitions for 805 KAR Chapter 001.

805 KAR 1:020. Protection of fresh water zones.

805 KAR 1:030. Well location and as-drilled location plat, preparation, form and contents.

805 KAR 1:050. Bonds, requirements, cancellation.

805 KAR 1:060. Plugging wells.

805 KAR 1:080. Gas storage reservoirs; drilling, plugging in vicinity.

805 KAR 1:110. Underground injection control.

805 KAR 1:120. Operating or deepening existing wells and drilling deeper than the permitted depth.

805 KAR 1:140. Directional and horizontal wells.

Division of Oil and Gas

805 KAR 1:170. Content of the operations and reclamation plan.

805 KAR 1:180. Production reporting.

805 KAR 1:190. Gathering lines.

805 KAR 1:200. General information associated with oil and gas permits.

Sanctions and Penalties

805 KAR 9:011. Repeal of 805 KAR Chapter 009.

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

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

806 KAR 9:030. Adjuster licensing restrictions.

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

806 KAR 9:070. Examinations.

806 KAR 9:110. Agent's rights after contract termination.

806 KAR 9:190. Disclosure requirements for financial institutions authorized to engage in insurance agency activities.

806 KAR 9:200. Volume of insurance agent exchange of business.

806 KAR 9:310. Life settlement licenses.

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

806 KAR 9:341. Repeal of 806 KAR 009:341.

806 KAR 9:350. Recognition of financial planning certification and designation for receipt of fees and commissions.

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

902 KAR 20:036. Operation and services; personal care homes. Stephanie Brammer – Barnes, regulation coordinator; Kara Daniel, division director; Steven Davis, inspector general; and Wendy Morris, commissioner, represented the division. Betsy Johnson, president, and Joe Jurgensen, administrator, Kentucky Association of Health Care Facilities/Kentucky Center for Assisted Living, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair Hale, Mr. Davis stated that the Office of Inspector General was the oversight agency within the cabinet and licensed child care and health care facilities, including Personal Care Homes (PCHs.) This administrative regulation was the result of a settlement agreement made by the cabinet for which the Office of Inspector General was the enforcement agency; however, the Office of Inspector General did not directly initiate this overall policy. There were two (2) primary types of

PCHs, freestanding facilities that served clients with Severe Mental Illness (SMI), which received minimal federal funding, and assisted living-type facilities, which may charge a much higher amount. The cabinet was continuing to develop and reorganize PCH requirements. PCHs were not being expected to provide occupational, physical, or speech therapies. PCHs were expected to provide basic assistance with individuals who were transitioning out of facilities.

In response to questions by Co-Chair Hale, Ms. Morris stated that many initial concerns of stakeholders had been remedied by the Amended After Comments version of this administrative regulation. Required Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs) would be provided by existing provider employees and should require minimum burden. The agency planned to record instruction for the convenience of providers and was developing a comprehensive curriculum for training purposes. Reimbursement rates were always an ongoing concern. There were many stakeholders who commented during the public comment period. The agency also worked with Protection and Advocacy to ensure that these requirements and the training curriculum complied with the settlement agreement.

In response to a question by Co-Chair West, Ms. Morris stated that this administrative regulation was narrowly tailored to comply with the settlement agreement, which was an agreement to avoid litigation. The cabinet entered into a settlement agreement with Kentucky Protection and Advocacy based on the Olmstead decision of 1999. In accordance with the Olmstead decision, states were obligated to ensure that clients who did not wish to live in a congregate living system had ample services and supports in the community. The decision did not require the state to move people out, but to ensure that states were not relying exclusively on congregate living systems.

In response to a question by Co-Chair Hale, Ms. Johnson stated that Kentucky Association of Health Care Facilities/Kentucky Center for Assisted Living was opposed to this administrative regulation because the settlement agreement with Kentucky Protection and Advocacy prohibited the cabinet from developing its own policy. Although the terms of the settlement agreement negatively impacted private licensed PCHs and their clients, neither group were included in the settlement agreement process. Public policy should not be developed without all stakeholders having input, and the settlement agreement circumvented KRS Chapter 13A because agency decisions were held captive by the settlement agreement, which lacked judicial review. This administrative regulation exacerbated the already severe underfunding of PCHs by subverting limited resources to a small group of residents to whom the settlement agreement applied. KRS 13A.270 and 13A.280 established a right for all stakeholders to have the opportunity to comment in a meaningful way regarding proposed administrative regulations. The promulgating agency then issues a Statement of Consideration. The settlement agreement, by limiting the agency's decision-making process, negated meaningful comments and responses pursuant to KRS 13A.270 and 13A.280. Additionally, the agency did not submit the required cost

estimate required as part of the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT. PCHs received forty (40) dollars and forty-seven (47) cents per day, per client and could not afford this unfunded mandate.

In response to a question by Co-Chair Hale, Mr. Jurgensen stated that many of Kentucky's most vulnerable citizens were entrusted into the care of specialized PCHs. For many of these residents with SMIs, no amount of community supports would allow them to live safely independent of a congregate living system. Funding for PCHs was grossly inadequate. PCHs received no more than forty (40) dollars and forty-seven (47) cents per day, per client, but were required to provide client care, quality meals, hygiene products, sponsored activities, assistance with physician services and medication, and assistance with the clients' financial management needs. The daily reimbursement had not been increased since 2006. The average reimbursement was seventeen (17) dollars per day, per client. PCHs operate in a highly regulated environment with low margins. Additional requirements would burden PCHs, which might be forced to close. The estimated cost increase to implement these policy changes was four (4) dollars per day, per client. Most PCHs would be required to add additional staff. Staff were not equipped for these new requirements, and adverse incidents might result. Stakeholders were not included in the settlement agreement.

In response to a question by Co-Chair West, Mr. Jurgensen stated that there were approximately eighty-eight (88) PCHs, including both types. It was likely if this administrative regulation became effective at these rates, that many PCHs would go out of business. Ms. Johnson stated that it would be preferable for the agency to remove the requirements pertaining to ADLs and IADLs. All stakeholders should be included in policy decisions surrounding the settlement agreement. PCHs could not continue to operate on forty (40) dollars and forty-seven (47) cents per day, per client.

In response to a question by Representative Marzian, Mr. Jurgensen stated that the number of clients varied among PCHs. Forty (40) to sixty (60) clients per PCH might be the state average.

In response to questions by Co-Chair Hale, Mr. Davis stated that the cabinet was aware of some of the challenges PCHs were facing. The cabinet was working toward streamlining and reorganizing requirements. The reimbursements came from the General Fund. There were also inherent legal obstacles to funding. The cabinet did not believe that changes would add significant expenses to PCHs. The ADLs and IADLs were very simple in nature and were not expected to require additional staffing. Ms. Morris stated that there was a 2012 LRC study done regarding PCHs. Unfortunately, there were adverse outcomes for some clients within PCHs and after transitioning out. PCHs sometimes closed because of quality of care problems as well as funding problems. Some other states had similar settlement agreement issues and problems. The number of clients transitioning was very small per facility. Comprehensive training existed outside of this administrative regulation.

In response to questions by Co-Chair West, Mr. Davis said that the streamlining process would take approximately nine (9) months for development. Many of the issues of concern would remain but would be more isolated. Rehabilitation should be a primary goal for these facilities. The settlement agreement needed to move forward; therefore, removing the requirements of concern for consideration at the 2020 Regular Session of the General Assembly was not preferable to the agency. Ms. Morris stated that these requirements were a small step toward making PCHs more rehabilitative for clients.

Representative Frazier stated that there were concerns about many aspects of this administrative regulation.

In response to a question by Representative Marzian, Ms. Morris stated that the agency expected to ask for increased funding for these and other related programs through DCBS. Mr. Nemes stated that the agency was the enforcement arm of the program, not the budgeting arm.

In response to a question by Co-Chair Hale, the agency agreed to defer consideration of this administrative regulation to the October meeting of the subcommittee. Without objection, and with agreement of the agency, this administrative regulation was deferred.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph; Sections 1 through 4 and 7; and the SMI Screening Form to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 20:370. Operations and services; private duty nursing agencies.

902 KAR 20:430 & E. Facilities specifications, operation and services; behavioral health services organizations for mental health treatment.

Department for Public Health: Division of Audits and Investigations: Controlled Substances

902 KAR 55:070. Emergency medication kits in long-term care facilities.

Department for Medicaid Services: Payments and Services

907 KAR 3:170 & E. Telehealth service coverage and reimbursements.

Division of Policy and Operations: Behavioral Health

907 KAR 15:005 & E. Definitions for 907 KAR Chapter 015.

907 KAR 15:010 & E. Coverage provisions and requirements regarding behavioral health services provided by individual approved behavioral health practitioners, behavioral health provider groups, and behavioral health multi-specialty groups.

907 KAR 15:015 & E. Reimbursement provisions and requirements for behavioral health services provided by individual approved behavioral health practitioners, behavioral health provider groups or behavioral health multi-specialty groups.

907 KAR 15:020 & E. Coverage provisions and requirements regarding services provided by behavioral health services organizations for mental health treatment.

907 KAR 15:022 & E. Coverage provisions and requirements regarding services provided by behavioral health services organizations for substance use disorder treatment and co-occurring disorders.

907 KAR 15:025 & E. Reimbursement provisions and requirements regarding behavioral health services provided by behavioral health services organizations.

Department for Community Based Services: Division of Protection and Permanency: Child Welfare

922 KAR 1:320 & E. Service appeals.

The subcommittee adjourned at 12:50 p.m. The next meeting of the subcommittee is tentatively scheduled for October 8, 2019, at 1 p.m.