

# **ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**

## **Minutes of the November Meeting**

**November 12, 2019**

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

The November meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, November 12, 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, and Tommy Turner.

Guests: Sarah Levy, Travis Powell, Council on Postsecondary Education; Andrew English, Farah Petter, Auditor of Public Accounts, Scott Aubrey, Division of Real Property; Joe Donohue, Board of Accountancy, Lois Ann Disponett, Marc Manley, Real Estate Commission; Bryan Morrow, Board of Licensed Professional Counselors; Chris Garland, Rich Storm, Karen Waldrop, Department of Fish and Wildlife Resources; Lesly Davis, Michael Mullins, Office of Administrative Hearings; Peter Goodmann, Tony Hatton, Department of Environmental Protection; Doug Back, Matt Henderson, Jon Johnson, Larisa Plecha, Bryan Prater, Department of Vehicle Regulation; Tony Cotto, Lee Webb, Department of Insurance; Stephanie Brammer-Barnes, Steve Davis, Office Inspector General; Jonathan Scott, Department for Medicaid Services; Laura Begin, Rachael Ratliff, Department for Community Based Services; Michael Jarrell, Cindy Seip, Betsy Johnson, Bruce Linder, Chris McCuthion, Chris McCreary, Heidi Schissler, and Tim Veno.

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, November 12, 2019, and submits this report:**

**Pursuant to KRS 13A.335(2), the subcommittee reconsidered the following administrative regulation, which was found deficient at the October 8 meeting of the subcommittee, and approved a motion that the administrative regulation was not deficient.**

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

601 KAR 13:100. Medical standards for operators of motor vehicles. Please see this administrative regulation in the next section of these minutes for discussion and action information.

*Compiler's Note: Pursuant to KRS 13A.335(3)(c), Section 13, which reflected the finding of deficiency, was deleted from this administrative regulation.*

**Administrative Regulations Reviewed by the Subcommittee:**

**COUNCIL ON POSTSECONDARY EDUCATION: Nonpublic Colleges**

13 KAR 1:020. Private College licensing. Sarah Levy, executive director, and Travis Powell, vice president and general counsel, represented the council.

In response to a question by Co-Chair Hale, Mr. Powell stated that this administrative regulation allowed the council to better protect students and consumers by ensuring that institutions kept electronic records, which were more secure and searchable. Electronic records were also advantageous if an institution closed or needed to transfer data.

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

**AUDITOR OF PUBLIC ACCOUNTS: Audits**

45 KAR 1:050. Audits of fiscal courts. Andrew English, general counsel, and Farah Petter, assistant state auditor, represented the auditor.

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.

**FINANCE AND ADMINISTRATION CABINET: Office of the Secretary: Property**

200 KAR 6:015. Real property inventories. Scott Aubrey, division director, represented the office.

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

### **BOARDS AND COMMISSIONS: Board of Accountancy**

201 KAR 1:100. Continuing professional education requirements. Joe Donohue, board counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 5, 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.

201 KAR 1:190. Examination sections, applications, and procedures.

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

### **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. Lois Ann Disponett, chair; Marc Manley, acting general counsel; and Tony Cotto, executive advisor, represented the commission. Michael Jarrell, owner and broker, First Nations Realty, appeared in opposition to 201 KAR 11:011 and 11:105.

In response to a question by Co-Chair Hale, Mr. Cotto stated that the commission had engaged with stakeholders extensively over the last year to develop this administrative regulation package. Multiple public hearings were held, and the commission made amendments and compromises based on most of the public comments.

Mr. Jarrell requested further amendments to 201 KAR 11:011 and 11:105, related to issues of communications and technology. Government oversight was not keeping track with technological changes, which created opportunities for misrepresentation, especially

pertaining to advertising. Technologies such as email and Facebook posed challenges that were not sufficiently addressed by this administrative regulation package. Mr. Jarrell strongly disagreed that, as established in 201 KAR 11:011, private communications should be exempt from licensee identification until a relationship for real estate services was clearly established. It was a bad precedent for real estate licensees to be allowed to not disclose identification via regular mail and email. 201 KAR 11:105 established the One-click requirement for licensee identification, which required a licensed realtor to self-identify within one (1) click of a Web site advertisement. Internet advertisements were generated from individualized algorithms; therefore, a consistent One-click requirement seemed ineffective. Licensee identification should be on every page of real estate advertisement or materials.

In response to a question by Co-Chair Hale, Mr. Cotto stated that the One-click requirement ensured that licensee identification was within one (1) click of a Web site advertisement. The commission believed that the One-click requirement was the most comprehensive way to promote licensee identification because the agency did not have authority over the platforms themselves. Mr. Manley stated that the licensee identification exemption for private communication only applied if confidential information had not been shared with the licensee. Additionally, advertisements were not exempt; therefore, unsolicited emails should not be a major concern. Because it was not possible to anticipate technological changes, the general One-click requirement was the most comprehensive way to promote licensee identification.

In response to questions by Co-Chair West, Mr. Manley stated that a licensee would be required to self-identify in an advertisement or in communication, such as mail or email, if real estate advertisement takes place or if confidential information regarding real estate is included.

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.

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

A motion was made and seconded to approve the following amendments: (1) 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.

201 KAR 11:105. Advertising.

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

6 and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 11:121. Standards of professional conduct.

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 1 through 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 11:170. Education provider requirements.

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 7, 9 through 12, and 16 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 11:190. Consumer and administrative complaints; discipline; administrative hearings.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 and 6 through 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph; Sections 1 through 4 and 6 through 15; and material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

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 and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

**Board of Respiratory Care**

201 KAR 29:015. Fees. Tony Cotto, executive advisor, represented the board.

**Board of Licensed Professional Counselors**

201 KAR 36:060. Qualifying experience under supervision. Bryan Morrow, attorney, represented the board.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 2:049. Small game and furbearer hunting and trapping on public areas. Chris Garland, Wildlife Division Director; Rich Storm, commissioner; and Karen Waldrop, deputy commissioner, represented the department.

Co-Chair Hale thanked Ms. Waldrop, upon her departure from the department, for her twenty (20) years of public service.

Representative Turner stated that it was an honor to have worked with Ms. Waldrop. Her work was appreciated.

Ms. Waldrop thanked the subcommittee and staff for the years of assistance with the department's administrative regulations.

301 KAR 2:090. Means by which migratory game birds may be taken.

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

**ENERGY AND ENVIRONMENT CABINET: Office of the Secretary: Administration**

400 KAR 1:110. Administrative hearings relating to matters brought under KRS Chapter 350 or KRS 351.310 through 351.357. Lesly Davis, executive director, Office of Administrative Hearings, and Michael Mullins, regulation coordinator, represented the office.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1, 5, 7, 8, and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### **Department for Environmental Protection: Division of Water: Water Wells**

401 KAR 6:001 & E. Definitions for 401 KAR Chapter 006. Peter Goodman, division director, and Tony Hatton, commissioner, represented the division.

In response to a question by Co-Chair West, Mr. Hatton stated that 401 KAR 6:001, 6:211, 6:310, 6:320, and 6:350 primarily affected drilling companies with multiple drill rigs. Previously, a certified well driller was required to be on-site during well installation. This package of administrative regulations, in accordance with Senate Bill 32 from the 2019 Regular Session of the General Assembly, established a certified well driller's assistant, who may supervise well installation.

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.

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

401 KAR 10:031. Surface water standards.

A motion was made and seconded to approve the following amendment: to amend Section 6 to correct a unit of measurement. Without objection, and with agreement of the agency, the amendment was approved.

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

601 KAR 13:090. Medical Review Board; basis for examination, evaluation, tests. Doug Back, MD (Ophthalmology) and member, Medical Review Board; Matt Henderson, commissioner; Larisa Plecha, staff attorney; and Bryan Prater, MD (Ophthalmology) and member, Medical Review Board, represented the department. Cindy Seip, Franklin County resident, appeared in opposition to 601 KAR 13:100.

At the October 8 meeting of the Administrative Regulation Review Subcommittee, 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 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.

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

In response to a question by Co-Chair West, Mr. Henderson stated that this administrative regulation was deferred from the October 8 meeting of the subcommittee. After that meeting, the department met with individual members to clarify the department's rationale for the requirements in this administrative regulation. The department's amendment did not make substantive changes to visual standards from the currently effective version of this administrative regulation. Certain diagnoses, such as hemianopia, did not preclude an applicant from testing for a driver's license. Each individual had the opportunity for driving evaluations, clinical examinations, and other testing opportunities, including appeals in accordance with KRS Chapter 13B.

Senator Kerr made a motion, seconded by Senator Clark, to lift the finding of deficiency on this administrative regulation. On a roll call vote, all members present voted in support of lifting the finding of deficiency. Without objection, the motion was approved.



In response to a question by Co-Chair Hale, Ms. Seip stated that she had an incomplete homonymous hemianopia and had demonstrated that she was a safe driver. She had obtained a judge-ordered driver's license. The department chose not to further amend this administrative regulation. Ms. Seip stated that her counsel indicated that it was required for the department to submit the amended version of this administrative regulation, including time for public response. For over sixteen (16) years the department denied numerous requests by Ms. Seip for a road assessment, despite the fact that KRS 186.570 required the Medical Review Board to provide technical assistance in the evaluation of a person's ability to drive safely. Ms. Seip stated that she was automatically excluded from a road assessment due to failure to meet visual standards. Ms. Seip had taken and passed two (2) road assessments, for a total of approximately five (5) hours of testing; however, the department continued to deny her a driver's license. Subsequently as a result of litigation, she obtained a judge-ordered driver's license. Ms. Seip stated that her counsel indicated that failure to include individualized opportunities for assessment opened this administrative regulation to litigation for violating the Americans with Disabilities Act.

In response to questions by Co-Chair West, Mr. Henderson stated that the department had not made further amendments to this administrative regulation since the October 8 meeting of the subcommittee. Ms. Seip was given the opportunity for a driving evaluation. The field of vision standard required at least a thirty-five (35) degree visual field in each eye. That standard remained unchanged in this version of this administrative regulation. The authorizing statutes and administrative regulations established clear standards that prohibited issuing a driver's license to applicants who did not meet those standards. It was therefore possible to pass a road assessment without meeting the required standards, which led to Ms. Seip's judge-ordered driver's license. The department was prohibited from itself issuing a driver's license to a person who did not meet the required visual field standards. It was accurate that the judge's determination in Ms. Seip's case was inconsistent with the authorizing statutes and administrative regulations regarding the visual field standards.

At the October 8 meeting of the Administrative Regulation Review Subcommittee, a motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1 and 3 through 11 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 11 to clarify that the visual acuity standard includes 20/61 "or worse." Without objection, and with agreement of the agency, the amendments were approved.

*Compiler's Note: Pursuant to KRS 13A.335(3)(c), Section 13, which reflected the finding of deficiency, was deleted from this administrative regulation.*

### **PUBLIC PROTECTION CABINET: Department of Insurance: Investments**

806 KAR 7:031. Repeal of 806 KAR 007:030. Tony Cotto, executive advisor, and Lee Webb, director, represented the department.

## **Agents, Consultants, Solicitors, and Adjusters**

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

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

806 KAR 9:025. Agent licensing process.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs; Sections 1, 5 through 7, and 9; 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.

806 KAR 9:030. Adjuster licensing restrictions.

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

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

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

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A; and (2) to delete Section 3. Without objection, and with agreement of the agency, the amendments were approved.

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

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 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

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

806 KAR 9:221. Repeal of 806 KAR 009:001, 806 KAR 009:070, and 806 KAR 009:220.

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

806 KAR 9:310. Life settlement licenses.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 and 6 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 to cross reference 806 KAR 9:025 that incorporates by reference the NAIC Individual Insurance Producer license application and the Uniform Application for Business Entity Insurance License. Without objection, and with agreement of the agency, the amendments were approved.

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.

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

### **Surplus Lines**

806 KAR 10:061. Repeal of 806 KAR 010:060.

### **Insurance Contract**

806 KAR 14:061. Repeal of 806 KAR 014:060.

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

902 KAR 20:370. Operations and services; private duty nursing agencies. Stephanie Brammer – Barnes, regulation coordinator, and Steve Davis, inspector general, represented the division. Heidi Schissler, legal director, Kentucky Protection and Advocacy appeared in opposition to this administrative regulation.

In response to a question by Co-Chair West, Mr. Davis stated that the four (4) hour limit for private duty nursing stemmed from a legacy concern about encroachment into the home health jurisdiction by private duty nurses. Currently, home health and private duty nursing were separate and different services; therefore, concerns about encroachment were no longer salient. Removing the four (4) hour limit would correct gaps in coverage that were occurring. Home health agencies were required to obtain a Certificate of Need. Private duty nursing was certified through a nonsubstantive review process. There were currently only twelve (12) certified private duty nursing providers, due in some instances to the four (4) hour limit. There were also gaps in coverage due to lack of emergency service providers. The Energy Employees' Occupation Illness Compensation Act established a federal payment source for specific types of employee illnesses, such as illnesses related to gaseous diffusion operations. There were jurisdictional encroachment issues pertaining to these providers.

In response to questions by Co-Chair Hale, Ms. Schissler stated that Kentucky Protection and Advocacy supported removing the four (4) hour limit. Ms. Schissler requested that, for the protection of patients, the division amend this administrative regulation to add background check requirements for private duty nurses, including the Child Abuse and Neglect Central Registry and certain, relevant misdemeanors.

In response to questions by Co-Chair West, Ms. Schissler stated that the fee to conduct a background check pertaining to the Child Abuse and Neglect Central Registry was ten (10) dollars. There was no expected additional cost to search for certain misdemeanors because a felony check was already required.

In response to a question by Co-Chair Hale, Mr. Davis stated that the reason for not including these background checks was to keep requirements as commensurate as possible between home health providers and private duty nurses. While the cost for the background check was nominal, it was an additional burden not currently required for home health providers. Ms. Brammer – Barnes stated that there was already a requirement for a criminal records check upon initial employment, and there was nothing that prohibited a provider from disqualifying an applicant for employment based on any criminal violations. Nursing licensure requirements already included fingerprint-supported state and FBI background checks.

In response to a question by Senator Raque Adams, Mr. Davis stated that the division was not opposed to the additional background checks, but was interested in maintaining commensurate requirements for both home health providers and private duty nurses. Usually, a guardian remained present during private duty nursing care of a child. Senator Raque Adams stated that the additional cost in this case seemed to be worth the protection and this check was required for public school employees, in which case the fee was paid by the applicant. Co-Chair West stated that the additional cost seemed to be worth the protection to children, but the amendment should clarify if the background check was an initial pre-employment check or an annual check. Ms. Schissler stated that sometimes child abuse and neglect were not treated as criminal violations and might not appear in some background checks. Mr. Davis stated that it was a pre-employment, not an annual check.

In response to questions by Co-Chairs Hale and West, Mr. Davis stated that the division would agree to an oral amendment to include requirements for a background check through the Child Abuse and Neglect Central Registry, as established in 922 KAR 1:470, and to include relevant misdemeanors. It was important that the misdemeanors be only relevant ones in order to avoid excluding well-qualified employees, because many people had misdemeanors that were unrelated to potential service. Ms. Schissler stated that Kentucky Protection and Advocacy was concerned about misdemeanors related to abuse, neglect, or exploitation of a child.

A motion was made and seconded to approve the following amendments: to amend Section 4 to: (1) require a background check through the Child Abuse and Neglect Central Registry, as established in 922 KAR 1:470; (2) comply with the formatting requirements of KRS Chapter 13A; and (3) include relevant misdemeanors as part of the background check for working with children. Without objection, and with agreement of the agency, the amendments were approved.

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

**Department for Medicaid Services: Division of Policy and Operations:  
Behavioral Health**

907 KAR 15:005 & E. Definitions for 907 KAR Chapter 015. Jonathan Scott, regulatory and legislative advisor, represented the division.

A motion was made and seconded to approve the following amendments: to amend Section 1 to: (1) comply with the drafting requirements of KRS Chapter 13A; and (2) establish a six (6) month grace period for registered behavior technicians to complete the required training program, assessment, and examination. Without objection, and with agreement of the agency, the amendments were approved.

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.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 3 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Section 3 to: (a) establish a new service category of Applied Behavior Analysis (ABA); and (b) add registered behavior technicians to ABA support services and remove them from comprehensive community support services; and (3) to amend Section 4 to clarify terminology used for laboratory services. Without objection, and with agreement of the agency, the amendments were approved.

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.

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

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 3 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Section 2 to allow a one-time extension for obtaining accreditation; and (3) to amend Section 3 to: (a) establish a new service category of Applied Behavior Analysis (ABA); (b) add registered behavior technicians to ABA support services and remove them from comprehensive community support services; and (c) clarify when laboratory services will be reimbursable. Without objection, and with agreement of the agency, the amendments were approved.

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.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Section 2 to allow a one-time extension for obtaining accreditation; and (3) to amend Section 3 to: (a) require residential treatment providers to establish a contractual relationship with a narcotic treatment program that dispenses methadone if a recipient's choice of medication assisted treatment is methadone; (b) clarify

terminology used for laboratory services; and (c) allow temporarily certified alcohol and drug counselors in narcotic treatment programs to practice for three (3) years instead of two (2). Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend Sections 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 for Community Based Services: Division of Protection and Permanency: Child Welfare**

922 KAR 1:320 & E. Service appeals. Laura Begin, regulation coordinator, and Rachael Ratliff, legislative liaison, represented the division.

**The following administrative regulations were deferred or removed from the November 12, 2019, subcommittee agenda:**

**STATE BOARD OF ELECTIONS: Forms and Procedures**

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

**BOARDS AND COMMISSIONS: Board of Pharmacy**

201 KAR 2:095. Pharmacist interns.

**Real Estate Appraisers**

201 KAR 30:130. Education provider, instructor, and course.

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

301 KAR 2:185. Hunter education.

**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: Administration**

601 KAR 2:030E. Ignition interlock.

## **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.

**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, and Steve Davis, inspector general, represented the division.

In response to a question by Co-Chair Hale, Mr. Davis stated that the division requested to defer consideration of this administrative regulation to the December meeting of the subcommittee. A motion was made and seconded to approve the deferral request. Without objection, and with the agreement of the agency, this administrative regulation was deferred.

**Department for Community Based Services: Child Welfare**

922 KAR 1:330 & E. Child protective services.

**The subcommittee adjourned at 11:50 a.m. The next meeting of the subcommittee is tentatively scheduled for December 16, 2019, at 1 p.m.**