

# ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

## Minutes of the September Meeting

September 8, 2020

### Call to Order and Roll Call

The September meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, September 8, 2020, at 1:00 PM, in Room 171 of the Capitol Annex. Senator Stephen West, Chair, called the meeting to order, and the secretary called the roll.

### Present were:

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

Guests: Kathryn Gabhart, Executive Branch Ethics, Stephen McMurray, University of Kentucky Agriculture Experiment Station; David Trimble, Board of Podiatry; Bryan Morrow, Dr. Shawn Oak, Board of Licensure of Marriage and Family Therapists; Carson Kerr, Elizabeth Morgan, Board of Medical Imaging and Radiation Therapy; Clint Quarles, Department of Agriculture; Amy Barker, Jennifer Bogard, Department of Corrections; Jon Akers, Todd Allen, Whitney Crowe, Matt Ross, Ben Wilcox, Department of Education; Heather Dearing, Terry Manuel, Alicia McGrath, Beth Milburn, Department for Libraries and Archives; Laura Begin, Julie Brooks, Kara Daniel, Wes Duke, Lisa Lee, Adam Mather, Jonathan Scott, Miranda Stocker, Emily Tamas, Todd Trapp, Cabinet for Health and Family Services; Sheena Burch, Angie Clemons, Joan Geohegan, April Sexton McKinney, Brenda Packard, Karen Pendleton, Deanna Picklesimer, Tricia Oliver, Heidi Schissler, Kimberly Turner, Chris Weist, and Tony Wheatley.

LRC Staff: Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Young.

The Administrative Regulation Review Subcommittee met on Tuesday, September 8, 2020, and submits this report:

Effective Administrative Regulation Reviewed by the Subcommittee Pursuant to KRS 13A.030(3) and 13A.290(1)(b)3.:

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

902 KAR 2:210E. Covering the face in response to declared national or state public health emergency. Wes Duke, general counsel, represented the division. Sheena Burch, Angie Clemons, Joan Geohegan, April McKinney, Brenda Packard, Jenny Patten, Karen Pendleton, Deanna Picklesimer, Tricia Oliver, Kimberly Turner, Tony Wheatley, and Chris Weist appeared in opposition to this administrative regulation.

In response to questions by Co-Chair West, Mr. Duke stated that this emergency administrative regulation was promulgated to replace the previous emergency administrative regulation requiring face coverings. The previous emergency administrative regulation's requirements expired thirty (30) days after filing. This emergency administrative regulation was substantively the same as the previous version, except that it established an exception for the deaf, hard of hearing, and those actively communicating with the deaf or hard of hearing. Individuals exercising this exemption were to maintain at least six (6) feet of distance from those who were not members of that person's household. Mr. Duke was unsure as to why Secretary Friedlander and Dr. Stack were not present to testify. He was also unsure as to why Dr. Stack had not submitted the data regarding face covering efficacy, which Dr. Stack agreed to submit at the July 13 subcommittee meeting. Mr. Duke stated that he had emailed the subcommittee the legal analysis for the statutory authority for this emergency administrative regulation, to which he had agreed at the July meeting. He apologized to the members if it had not been received and stated that he would investigate why the subcommittee had not received that communication. He agreed to follow up with the subcommittee regarding the legal analysis for the statutory authority for this emergency administrative regulation and Dr. Stack's face covering efficacy data. Mr. Duke stated that, because of the nature of the pandemic, this emergency administrative regulation did not allow for the traditional public comment period. The public hearing was scheduled for October 26 at 9 a.m. While the requirements of this emergency administrative regulation would expire thirty (30) to sixty (60) days before the public hearing, the public hearing date was a statutory requirement. Mr. Duke stated that he was uncomfortable speculating whether or not the cabinet could hold an additional public hearing outside of the KRS Chapter 13A process. He believed that the current hearing was timely and that the cabinet made the right choice. The citation form being used by Local Health Departments was compliant with this current emergency administrative regulation but was not incorporated by reference in this emergency administrative regulation. There was a first-violation warning and a fine for a second violation. Mr. Duke stated that it did not seem necessary to incorporate the citation by reference. He was unaware that there was a citation circulated on the internet that showed the wrong administrative regulation number. The cabinet believed that several statutes and administrative regulations established authority for fines for more than one (1) violation, including from KRS Chapters 211 and 212 and KRS 214.020 and 214.990. This emergency administrative regulation was officially filed with LRC on August 10, 2020, at 8 a.m. An emergency administrative regulation would not become effective before being officially filed with LRC. Co-Chair West stated that, although this emergency administrative regulation was

filed on August 10, language within this emergency administrative regulation included an effective date of 5 p.m., August 7.

In response to a question by Representative Frazier, Mr. Duke stated that cited individuals and businesses could appeal through the KRS Chapter 13B hearing process. To Mr. Duke's knowledge, no one had sought an appeal at this time.

In response to a question by Senator Raque Adams, Mr. Duke stated that, as of today, there had been sixty-seven (67) citations for violations issued. Sixty-six (66) of those were first-violation warnings, and there had been one (1) second-violation citation with a fine.

Co-Chair Hale stated that, while he appreciated Mr. Duke's availability for testimony, the subcommittee would have been grateful to also hear from Dr. Stack and Secretary Friedlander. Like Co-Chair West, Co-Chair Hale also did not receive Mr. Duke's email with his legal analysis of the authority for this emergency administrative regulation. Mr. Duke stated that he would continue searching for the email.

In response to questions by Senator Thomas, Mr. Duke stated that Kentucky had authority to issue administrative regulations through its policing powers, and this was a safety-based emergency administrative regulation. KRS 214.020 authorized the cabinet to take action to prevent the spread of infectious diseases. KRS Chapter 39A and other grants of authority through the cabinet authorized this action. Mr. Duke stated that Dr. Stack had stated on multiple occasions that he was an advocate for face coverings because the science demonstrated efficacy in reducing the spread of coronavirus (Covid-19).

Co-Chair West stated that KRS 214.020 established penalties to be misdemeanors, which provided due process through the court system. In response to a question by Senator Thomas, Co-Chair West stated that a fine might be statutorily considered a violation, rather than a misdemeanor; however, the statute seemed to require misdemeanors. Co-Chair West allowed those appearing in opposition to this emergency administrative regulation to begin their testimonies.

Mr. Weist stated that some citations for face covering violations were being contested in the Kentucky Supreme Court and he represented some of the litigants involved. One (1) of his clients, April McKinney, was the owner of the Richmond Athletic Club, which had received a citation for a face covering violation from the Local Health Department, because a client had walked from one (1) piece of exercise equipment to another in the active act of exercising. Upon requesting a hearing, he was told by a Local Health Department representative that there was no right to a hearing. If the KRS Chapter 13B hearing process was being used, that message had not been received by all of the Local Health Departments. This emergency administrative regulation did not properly incorporate material by reference, in contravention of statutory requirements. This

emergency administrative regulation did not contain the cost analysis required by KRS 13A.240(1)(f)2. This emergency administrative regulation did not include the number and types of entities affected, as required by KRS 13A.240(1)(e). This emergency administrative regulation did not include a reference to the KRS Chapter 13B hearing process. There was no statutory authority that allowed the issuance of a citation.

Ms. McKinney stated that Richmond Athletic Club was cited for a face covering violation by the Madison County Health Department. No due process was offered. Active exercise was taking place, which was supposed to be an exemption. She was told by an inspector that there were no exemptions and that fines for her business would be payable directly to the Local Health Department, based on one (1) person's interpretation of this emergency administrative regulation. This was in violation of the American's with Disabilities Act and HIPPA. The business was threatened with closure unless a violator submitted proof of exemption. After contact with the inspector's supervisor, the interpretation was reversed and the business was told that there was no proof that the Executive Order could override federal law for those unable to wear facial coverings.

Ms. Packard stated that she was a disabled veteran, former business owner of thirty (30) years, and the single mother of a disabled child. The measures taken during the pandemic were affecting people more negatively than coronavirus (Covid-19) itself. After spinal surgery that made her pain worse, telehealth was her only option for seeking pain relief. There was basically no follow-up care because of the shutdown. Laser eye surgery services had also been shut down. Abortion clinics never shut down during the pandemic. Wearing a mask caused Post Traumatic Stress Disorder symptoms for her because of past trauma. The government made those unable to wear a facial covering seem less patriotic and unsympathetic. Even going to the grocery store resulted in public shaming, occasional photographing, and reports to the Governor's hotline. This situation exacerbated depression in some. A veteran in Pendleton County passed away, and his family was forced, because of the pandemic, to bury him in a rogue cemetery, with the goal of exhumation and reburial in a veterans' cemetery after the pandemic issues were resolved.

Mr. Wheatley stated that these mandates were about more than just masks. His friend, Mary Howard was involved in the unemployment situation that resulted from the pandemic shutdown. Claims were at an all-time high, and Kentucky experienced 451,000 claims during a forty-five (45) day period. Half of those remained unemployed at this time. 7,500 claims from that initial group had still not received processing. Civilian labor had decreased, while unemployment had increased. Mary Howard was out of money and was about to lose her home. These statistics represented real people like Mary Howard, who were suffering under these mandates. Kentucky's economy was deteriorating. Forty-eight (48) percent of those with the initial 451,000 claims had exhausted the allowed length of time for unemployment relief.

Ms. Oliver stated that she was the mother of a son with epilepsy and autism. On July 10, when the face covering emergency administrative regulation became effective, the struggle to keep a mask on her son began. On July 28, he removed his mask and began to have a seizure while in a restaurant. Restaurant employees stated that they would refuse service if her son did not put the mask on; therefore, she removed her son outside of the restaurant. Medical data determined that, during the two (2) weeks of wearing the mask, her son had experienced over 1,000 seizures. Wearing the mask seemed to have significantly exacerbated his medical condition. This situation caused his cognitive development to be severely set back. Her daughter was hearing impaired and had also experienced difficulty in public settings. A local restaurant demanded that her daughter disclose her medical condition in front of the public in order to prove that she was exempt from the face covering mandate.

Ms. Clemons stated that her six (6) year-old grandson represented the devastation of many Kentucky citizens because of the pandemic shutdown. Her grandson had lost his friends due to the social distancing mandates, isolation, and fear. The Governor was dividing people due to their political affiliations, which led to an elementary school teacher committing a hate crime against her grandson. The teacher ostracized him and inflicted emotional and mental abuse on him because his parents were Republicans. Her grandson was afraid to get near her because of fear that he would cause her to die from coronavirus (Covid-19). Despite new evidence confirming that most of those who had died had not died from coronavirus (Covid-19), the Governor threatened to again shut down Kentucky if citizens did not wear face coverings or if infection cases increased. The Governor's mandates had lost in the courts; therefore, why did these requirements remain in place? The Governor had set up a "snitch" hotline to encourage citizens to tell on each other. As a result, children were being harmed. One (1) of her grandson's friends tried to drown him in a pool, because his parents taught him to hate. Governor Beshear had infringed on citizens' civil rights and civil liberties. Law-abiding citizens were being denied due process. When did it become acceptable to force children to wear a mask, especially if those children did not have the mental capacity to understand the purpose? Any child under ten (10) did not have the capacity to grasp this situation. Children should not be denied the right to attend school. Many families were unequipped to school children from home, and the result was children showing signs of anxiety and emotional distress. Some children were having emotional outbursts as a result. When did it become acceptable for a teacher to ostracize a young child? When did it become acceptable to force parents to choose between staying at home to supervise their child who was unable to attend school or going to work, especially when paychecks were desperately needed? When did it become acceptable to tell a child that he could not go near his grandmother but that he could go to a hardware store to buy paint? When did it become acceptable to isolate children at home for months, potentially exposing them to abuse? Some households were abusive. When did it become acceptable to psychologically abuse our children by telling them that they might kill their grandparents? This is child abuse. The new normal is to abuse our children. This trauma will follow these children throughout their lives. Many will never feel safe again in

America. You could end this suffering and save Kentucky children by stopping our Governor.

Ms. Pendleton stated that she appreciated the subcommittee allowing public comments on this emergency administrative regulation. In the beginning of the pandemic, there was much that we did not know. Now we knew more, and it was clear that the government got some things wrong. We had never passed this way before. Now we knew about coronavirus (Covid-19). We knew how to treat it and that it was not very lethal. It was time to allow Kentuckians to follow the dictates of their own consciences. The time for restrictions was over, and the government of the Commonwealth of Kentucky needed to acknowledge that so that Kentucky could thrive. The government should be as good as its people.

Co-Chair West stated that he had deliberately made as much time available as possible for public comments pertaining to this emergency administrative regulation because, up until this time, no opportunity for public comments had been provided.

Ms. Burch stated that this emergency administrative regulation was supposed to enhance the prevention of the spread of the so-called infectious disease, coronavirus (Covid-19). There was no double-line evidence that wearing any old cloth over the nose and mouth did anything to enhance the prevention of the spread of coronavirus (Covid-19) or other so-called infectious diseases, including the disease called flu. There was no evidence that it was even healthy or safe to wear a face covering during an eight (8) hour shift for a workday, for children all day during school, or for CDL drivers, such as bus drivers. Wearing a face mask in public was only for specific religions, Halloween, or for criminal activity. This statement was corroborated by 200 KAR 3:020, Section 3(1)(j). Face masks and coverings promoted and supported criminal activity, such as child abductions, human trafficking, shoplifting, looting, and other criminal activity. This was a planned attack on our freedoms and the Constitution. The Centers for Disease Control (CDC) planned prior to 2010 to get states to implement their fascist laws in accordance with their Social Distancing Law Project, but thankfully the CDC was not the law of the land. This emergency administrative regulation was highly unscientific and was, most importantly, in violation of federal and state constitutionally protected rights. Sixteenth Amendment (2)(d) {sic} jurisprudence concluded that no emergency had just cause to suppress the Constitution. This emergency administrative regulation was an example of severe government overreach. She requested that this emergency administrative regulation be hastily denied, removed, and stricken.

Ms. Turner stated that she was here on behalf of her people, family, community, and church. She had a disability, and the disability-related inability to wear a face covering caused her to lose her job. She had been shamed in public for not wearing a face covering. People should not be denied public accommodations because of a pandemic. We were

prepped for this. On April 29, WDRB stated that citizens should treat each other as enemies if not in uniform, which was the face covering.

Ms. Patten stated that the decisions made today would affect us into the future. She filed an open records request in July for face covering supporting data referenced by the Governor in a press conference. The Office of the Governor's response was that zero records were available. She then filed an appeal with the Office of the Attorney General, which also resulted in a response that zero records were available. How was this not a violation of our constitutional rights because the mandate was unsupported by evidence? All claims must be substantiated by evidence and not just opinion, but we had nothing supporting the efficacy of mask wearing. In fact, numerous studies indicated otherwise. Zero peer-reviewed data indicated that masks prevented viral spread. Masks were nothing more than a symbolic gesture pursuant to the New England Journal of Medicine, which also stated that focusing on universal masking might paradoxically result in more transmission of coronavirus (Covid-19). The Center for Infectious Disease Research and Policy stated that cloth masks rated very low in efficiency in preventing very small particles from being inhaled by the wearer, even if the cloth mask was well fitted. The Journal of Orthopedic Translation's research indicated that cloth masks were intended to keep particles from one (1) micron from being inhaled. Coronavirus (Covid-19) particles were 0.125 microns in size; therefore, wearing a mask with the expectation of avoiding infection was irresponsible at best. Mask wearing could cause a condition called mask mouth, which could cause an increase in cavities, inflammation in the mouth, gum disease, and risk of stroke and heart attack. Studies demonstrated that mask use could increase fear response in wearers due to increased inhalation of CO<sub>2</sub>, especially those who experience panic attacks or have trauma-related conditions. Stop looking at citizens as viruses. She stated that her rights did not end where others' fears began. Decisions must be based on evidence, proof, and scientific data.

Ms. Picklesimer stated that she was a Christ follower foremost and a wife and mother of two (2) children. Remote learning was not working for her elementary-aged children. As a former state employee, the government should serve the people through their collective representatives and for the common good. This was a democracy and a commonwealth. People were using science to substantiate their own personal opinions and feelings to defend these mandates; this was worldly thinking, not Kingdom thinking. The government was infringing on personal liberty and freedom. People should do what each believed was personally best, and the government should not try to control their decisions. This began as flattening the curve in order to not overwhelm medical facilities, but had become a perversion of the Christian concept of loving your neighbor as yourself. Kentuckians did not need protection of this level because only a very small percentage of infected people died. Insinuating that those who did not wear a mask did not love their neighbor was foolish and divisive. Everyone should be allowed to express their viewpoints. The people should have the choice of wearing a mask and of in-person schooling. She did not think masks were effective, but she was following the rule. Coronavirus (Covid-19)

had high recovery rates. We should face this virus fearlessly with love and should not worry unless medical facilities began to be overwhelmed. There should not be a mandatory vaccine.

Ms. Geohegan, a registered nurse and certified diabetes education specialist, stated that it had been emphasized that patients had the right to self-determination. The citizens of Kentucky should all have the right to self-determination and all have the right to choose to wear a mask or go without. We could help those with underlying health conditions through education, but that was not happening. The information on the Administrative Reference Web site regarding how to manage diabetes was very outdated.

In response to a question by Co-Chair West, Mr. Duke stated that the legal analysis he had agreed to send to the subcommittee in July had been sent by messenger mail and must have been lost in transit. He apologized and stated that he would resubmit that information by email immediately after this subcommittee meeting. This emergency administrative regulation was properly promulgated by all applicable statutes. KRS 214.020 authorized the cabinet to prevent contagious diseases and enforce quarantine powers. This was a proper extension of Executive Branch power in accordance with KRS Chapter 39A.

Representative Marzian stated that wearing a mask was a small measure for our citizens and commonwealth to protect each other. Representative Marzian was a registered nurse who believed in and used science. We had passed this way before during the Spanish influenza of 1918. We have had approximately 200,000 people die from coronavirus (Covid-19) in this country. In the 1940s and 1950s, we experienced a tuberculosis epidemic in which her mother was quarantined for nineteen (19) months. Her grandmother was also quarantined and died from tuberculosis. At that time, tuberculosis was a deadly disease without a cure, just as coronavirus (Covid-19) was a deadly disease without a cure. She did not believe that our children were being abused due to these mandates. These measures would protect children and each other.

Co-Chair Hale stated that he appreciated those testifying today and the opportunity for their testimony. The administration did not give any opportunity for public comments regarding this emergency administrative regulation. Subcommittee members had received many emails from the public regarding this emergency administrative regulation. He wore his face covering, as most Kentuckians did; however, the majority of Kentuckians did not want to be ordered to wear face coverings. He respected the Governor, Dr. Stack, and Mr. Duke, but this seemed like an unconstitutional mandate. If given a choice, most Kentuckians would continue to wear the face coverings without an order.

Senator Thomas stated that, in many southern states, the incidence of coronavirus (Covid-19) deaths had increased. Kentucky led the way with the fewest cases and deaths due to the Governor's leadership and commitment to prevent infection spread through these



mandates, including face covering requirements. This mandate had saved countless lives. We all wanted to save lives, although we disagreed on how to achieve that. Science supported this policy. Wearing a face covering was the right thing to do for Kentucky.

A motion was made by Co-Chair Hale and seconded by Representative Frazier, to find this emergency administrative regulation deficient. Co-Chair West initiated discussion on the motion.

In response to a question by Mr. Duke, Co-Chair West stated that a motion of deficiency was the vehicle the subcommittee used to request that the Governor withdraw this emergency administrative regulation in accordance with KRS 13A.190.

Co-Chair West stated that this motion was not preplanned but was the natural result of the testimony. The subcommittee had had a thorough discussion of this emergency administrative regulation which affected every Kentuckian on a daily basis. This emergency administrative regulation seemed to arbitrarily single out specific businesses for the mandate. There were arbitrary exceptions to the mandate. This emergency administrative regulation mandated business practices and put businesses in the position of enforcing hastily promulgated requirements. Penalties in this emergency administrative regulation were arbitrary, and there was no provision for due process. There was inconclusive evidence of the efficacy of face coverings to prevent the spread of infection. No evidence had been provided to the subcommittee after an agreement at the July subcommittee meeting to provide evidence. The authorizing statutes did not provide for fines or business closures. The most egregious failure was the lack of opportunity for public comments. KRS Chapter 39A cited fifty-one (51) reasons for these powers; however, a pandemic was not a listed reason. The list did include “other biological occurrence”; therefore, Co-Chair West would give the Governor the benefit of the doubt regarding this issue. It was clear that the Governor had no intent of working with the legislature on these issues. The legislature had been entirely left out of the development of these policies. The legislature expected there to at least be an opportunity for public comments, but there had not been.

A roll call vote was taken. There being three (3) votes to find this emergency administrative regulation deficient, and five (5) votes against a finding of deficiency, the motion failed.

Senator Raque Adams explained her no vote. Jefferson County was very heavily populated, and most citizens had accepted mask wearing. Today’s testimony demonstrated that this emergency administrative regulation was not flexible enough. There was no due process provided. Exempted individuals were experiencing public shaming. A public comment process was needed sooner, rather than later. It was possible that, due to lack of coordination, the courts would have to settle this matter.

Representative Frazier explained her yes vote. This vote was not political or about the safety of masks. This emergency administrative regulation was a problem, because due process was not provided.

Senator Thomas explained his no vote. We were still learning about coronavirus (Covid-19). The safest way to deal with this pandemic was through face coverings. Approximately 200,000 US lives had been lost, and six (6) million US citizens had been infected. In many southern states, the incidence of coronavirus (Covid-19) deaths had increased, but Kentucky led the way with the fewest cases and deaths due to the Governor's leadership and commitment to prevent infection spread through these mandates, including face covering requirements.

#### Administrative Regulations Reviewed by the Subcommittee:

#### FINANCE AND ADMINISTRATION CABINET: Executive Branch Ethics Commission

9 KAR 1:010. Statement of financial disclosure. Kathryn Gabhart, executive director, represented the commission.

9 KAR 1:040 & E. Executive agency lobbyist, employer of executive agency lobbyist, and real party in interest registration and expenditure statements; financial transactions and termination forms; and enforcement.

#### AGRICULTURAL EXPERIMENT STATION: Seed

12 KAR 1:116. Sampling, analyzing, testing, and tolerances. Stephen McMurry, program director, represented the Agricultural Experiment Station.

12 KAR 1:120. Noxious weed seed.

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.

12 KAR 1:125. Identification of seed not for sale.

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

12 KAR 1:130. Labeling of seed mixtures.

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.

12 KAR 1:140. Permits, reports, and fees for persons using own tags.

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

12 KAR 1:155. Schedule of charges for samples submitted for testing.

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

12 KAR 1:160. Seed not required to be labeled by variety name.

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

12 KAR 1:170. Germination standards for flower seed.

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.

12 KAR 1:175. Seed certification in Kentucky.

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

**BOARDS AND COMMISSIONS: Board of Podiatry**

201 KAR 25:011. Approved schools; licensure application; fees. David Trimble, counsel, represented the board.

In response to a question by Representative Frazier, Mr. Trimble stated that requirements regarding educational venues had not changed with these amendments.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 4 through 6 to comply with the drafting requirements of KRS Chapter 13A; and (2) to update the Application for Podiatry License to include the increased fee amount of \$300. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 25:021. Annual renewal of licenses, fees.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A; and (2) to update the Application for Annual License Renewal to include the increased renewal fee amount of \$200. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 25:031. Continuing education.

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

Board of Licensure of Marriage and Family Therapists

201 KAR 32:110 & E. Telehealth. Dr. C. Shawn Oak, chair, and Bryan Morrow, counsel, represented the board.

In response to questions by Co-Chair Hale, Mr. Morrow stated that treatment may be provided to a minor pursuant to KRS 214.185. The treatment included life-saving interventions. Dr. Oak stated that life-saving interventions included situations in which a minor exhibited suicidal ideation and a guardian was not accessible.

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

Board of Medical Imaging and Radiation Therapy

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

201 KAR 46:035. Practice standards, scopes of practice, and ethical standards.

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

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

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2, 3, 6, and 7 for applicants who qualify for licensure pursuant to KRS 12.245, 12.354, or 12.357, and for consistency with KRS 311B.140; (2) to amend Sections 3 and 15 to comply with the drafting and formatting requirements of KRS Chapter 13A; (3) to update KBMIRT Forms 1 and 2 to: (a) update the question on the forms relating to KRS 12.245; and (b) clarify that, pursuant to KRS 311B.140, licensure fees shall be waived if the conditions were met; and (4) to add a new Section 9 to: (a) clarify that a licensee shall not allow a credential to lapse while the license is active; (b) require that if a licensee's credential is suspended, revoked, or otherwise discontinued by a national organization, the licensee shall immediately notify the board; and (c) establish what a licensee seeking reinstatement following a lapse in credential shall submit. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 46:050. Provisional training license for medical imaging technologists, radiographers, nuclear medicine technologists, and radiation therapists.

201 KAR 46:060. Continuing education requirements.

201 KAR 46:070. Violations and enforcement.

201 KAR 46:081. Limited X-Ray machine operator.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 3, 4, and 11 through 13 for applicants who qualify for licensure pursuant to KRS 12.245, 12.354, or 12.357, and for consistency with KRS 311B.140; (2) to add a new Section 5 to establish the requirements for an Initial limited X-ray machine operator license; (3) to amend Sections 3 and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A; (4) to update KBMIRT Forms 4 through 6 to: (a) update the question on the forms relating to KRS 12.245; and (b) clarify that, pursuant to KRS 311B.140, licensure fees shall be waived if the conditions were met; (5) to amend Section 1 to delete what limited diagnostic radiography shall include, which is established in Section 8 of this administrative regulation pertaining to approved procedures; (6) to amend Section 7 to clarify the curricular standards for programs for general limited x-ray machine operators, limited podiatry x-ray machine operators, and limited bone densitometry x-ray machine operators; and (7) to add material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 46:100. Medical Imaging and Radiation Therapy Scholarship and Continuing Education Fund.

In response to questions by Co-Chair Hale, Ms. Morgan stated that the Medical Imaging and Radiation Therapy Scholarship and Continuing Education Fund would be funded through licensing fees after other daily operating expenses and appropriations had been made. This was a new fund.

A motion was made and seconded to approve the following amendments: (1) to amend Section 5 to establish: (a) that repayment may be deferred if an active duty member of the US Armed Forces; and (b) what a request for deferral required; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 through 7 to comply with the drafting requirements of KRS Chapter 13A; and (3) to update material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Department of Agriculture: Office of Agriculture Marketing

302 KAR 60:010. Produce safety. Clint Quarles, counsel, 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 1 through 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

501 KAR 6:220. Treatment for sex offenders. Amy Barker, assistant general counsel, represented the department.

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.

EDUCATION AND WORKFORCE DEVELOPMENT: Board of Education: Department of Education: Charter Schools

701 KAR 8:020. Evaluation of charter school authorizers. Todd Allen, general counsel, represented the department.

In response to a question by Senator Thomas, Mr. Allen stated that, while no appropriation had been made, the authorizing statute required the department to promulgate this administrative regulation. Despite the lack of funding, the department had received one (1) application; however, that school did not open.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 4 through 8 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: General Admission

702 KAR 1:180. School security risk assessment tool.

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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department for Libraries and Archives: Division of Library Services: Libraries

725 KAR 2:060. Certification of public librarians. Terry Manuel, commissioner, represented the division.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 4, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

725 KAR 2:070. Certification renewal of public librarians.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Certificate of Need: State Health Plan

900 KAR 5:020. State Health Plan for facilities and services. Kara Daniel, deputy inspector general, and Adam Mather, inspector general, represented the division.

Department for Public Health: Division of Maternal and Child Health

902 KAR 4:140E. Enhanced HANDS services in response to declared national or state public health emergency. Julie Brooks, regulation coordinator, represented the division.

#### Kentucky Early Intervention System

902 KAR 30:010E. Enhanced early intervention services in response to declared national or state public health emergency.

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

907 KAR 1:604 & E. Recipient cost-sharing. Lisa Lee, commissioner, and Jonathan Scott, regulatory and legislative advisor, represented the division.

In response to questions by Co-Chair West, Ms. Lee stated that the agency amendment changed the division's initial policy regarding eliminating copays. The initial policy to eliminate copays was due to administrative burden to providers and due to the lack of federal funding the copays created. There was concern that this policy was in conflict with KRS 205.6312, which required copays. An actuarial analysis calculated that the cost would be approximately \$20 million, with \$16 million in the form of federal funds and \$4 million in the form of state funds. The copays would cause Kentucky to lose the \$16 million in federal matching funds. Providers were prohibited from refusing treatment for Medicaid patients who did not pay their copayments; therefore, providers were the primary entity losing funds. Providers had a substantive administrative burden regarding collecting copays, and providers were losing the federal matching funds. The implementation of copays would cause Kentucky to lose federal matching funds; therefore, it would cost the state more with the copays than without.

Senator Thomas stated that he supported this administrative regulation. Copays were a barrier to healthcare accessibility. Eliminating barriers to healthcare accessibility was especially important during this coronavirus (Covid-19) pandemic.

In response to questions by Co-Chair Hale, Mr. Scott stated that the copay prior to the initial amendment averaged three (3) dollars, with some prescription copays as high as eight (8) dollars and a fifty (50) dollar copay for inpatient hospitalization. Ms. Lee stated that the average copay prior to the initial amendment averaged three (3) to four (4) dollars. There were approximately 250,000 individuals who qualified for these copays.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 6 to: (1) establish one (1) dollar copayments for: (a) non-emergency uses of the ER; (b) prescription and over-the-counter drugs; and (c) ambulance transportation for non-emergency health services; (2) exempt certain types of medication



from the copayment requirement; (3) exempt all other copayments for the calendar year after a recipient has paid an initial copayment for any product or service; (4) exempt certain categories of recipients, such as foster children and pregnant women; (5) prohibit an unpaid copayment from being considered a debt to the provider; (6) authorize the department to waive all cost-sharing if there is a declared health-related emergency; and (7) authorize an MCO to impose a lower copayment or no copayment. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Division of Family Support: Energy Assistance Program/Weatherization

921 KAR 4:116 & E. Low Income Home Energy Assistance Program or “LIHEAP.” Laura Begin, regulation coordinator, and Todd Trapp, assistant director, represented the division.

Community Action Agencies

922 KAR 6:010 & E. Standards for community action agencies.

Division of Protection and Permanency: Rape Crisis Centers

922 KAR 8:010. Standards for rape crisis centers. Laura Begin, regulation coordinator, and Emily Tamas, program coordinator, 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, Ms. Begin stated that the division was under the impression that Ms. Schissler’s concerns were statutory, rather than regulatory.

In response to questions by Co-Chair West, Ms. Schissler stated that Kentucky Protection and Advocacy requested that this administrative regulation include as part of background check provisions, a check of the Caregiver Misconduct Registry. After investigation, there did not seem to be statutory authority to add that at this time. A statutory change was needed and recommended. Ms. Begin stated that the division was not seeking deferral. Adding this registry would be a good amendment, but was not currently possible due to statutory constraints. The division would not oppose a future statutory amendment to make this change.

The following administrative regulations were deferred or removed from the September 8, 2020, subcommittee agenda:

AGRICULTURAL EXPERIMENT STATION: Fertilizer

12 KAR 4:075. Licenses and fertilizer product registration.

12 KAR 4:080. Plant nutrient guarantees and labeling.

12 KAR 4:091. Repeal of 012 KAR 004:090, 004:120, and 004:160.

12 KAR 4:100. Slowly released nutrients; labeling.

12 KAR 4:110. Definitions for 012 KAR Chapter 004.

12 KAR 4:130. Investigational allowances.

12 KAR 4:140. Monetary penalties.

12 KAR 4:170. Maximum chlorine guarantees for tobacco fertilizers.

#### BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:050. Licenses and permits; fees.

201 KAR 2:105. Requirements for wholesalers, medical gas wholesalers, wholesale distributors, and virtual wholesale distributors.

201 KAR 2:106. Licensed or permitted facility closures.

201 KAR 2:240. Special limited pharmacy permit- charitable.

201 KAR 2:311. Compounding for veterinary use.

201 KAR 2:320. Requirements for manufacturers and virtual manufacturers.

#### Board of Chiropractic Examiners

201 KAR 21:041. Licensing, standards, fees.

201 KAR 21:042. Standards, application and approval of continuing education.

201 KAR 21:095. Licensure, registration, and standards of persons performing peer review.

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

202 KAR 7:201. Emergency Medical Responders.

202 KAR 7:301. Emergency Medical Technician.

202 KAR 7:330. Advanced Emergency Medical Technician.

202 KAR 7:401. Paramedics.

202 KAR 7:601. Training, education and continuing education.

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

501 KAR 6:120. Blackburn Correctional Complex.

PUBLIC PROTECTION CABINET: Department of Charitable Gaming

820 KAR 1:050 & E. Raffles.

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

902 KAR 2:020 & E. Reportable disease surveillance.

Division of Maternal and Child Health

902 KAR 4:030. Newborn Screening Program.

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

902 KAR 20:160. Chemical dependency treatment services and facility specifications.

902 KAR 20:440. Facilities specifications, operation and services; residential crisis stabilization units.

Department for Public Health: Division of Public Health Protection and Safety: Food and Cosmetics

902 KAR 45:110. Permits and fees for retail food establishments, vending machine companies, and restricted food concessions.

902 KAR 45:180. Permits and fees for food manufacturing plants, food storage warehouses, salvage processors and distributors, cosmetic manufacturers, and certificate of free sale.

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

907 KAR 15:070. Coverage provisions and requirements regarding services provided by residential crisis stabilization units.

907 KAR 15:080. Coverage provisions and requirements regarding chemical dependency treatment center services.

The subcommittee adjourned at 3:25 p.m. The next meeting of the subcommittee is tentatively scheduled for October 13, 2020, at 1 p.m.