

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the August Meeting

August 10, 2021

Call to Order and Roll Call

The August meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, August 10, 2021, at 1:00 PM, in Room 149 of the Capitol Annex. Senator Stephen West, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Stephen West, Co-Chair; Representative David Hale, Co-Chair; Senators Alice Forgy Kerr, and David Yates; Representatives Randy Bridges, Deanna Frazier, and Mary Lou Marzian.

Guests: Cassie Trueblood, Education Professional Standards Board; Carrie Bass, Michael Board, Kentucky Retirement Systems; Leanne Diakov, Eric Fuchs, Board of Medical Licensure; Robert Andrew, Phil Dietz, Chuck O'Neal, John Wood, Board of Medical Emergency Medical Services; Dave Dreves, Steven Fields, Chris Garland, Department for Fish and Wildlife Resources; David Atha, Matt Cole, Tiffany Duval, Jon Johnson, Larissa Plecha, Transportation Cabinet; Todd Allen, Matthew Courtney, Kelly Foster; Board of Education; Erin Bravo, Sam Flynn Anthony Hudgins, Office of Unemployment Insurance; Robin Maples, Chuck Stribling, Occupational Safety and Health; John Ghaelian, Douglas Gott, Dale Hamblin, Robert Walker, Department of Workers Claims; Abigail Gall, Betsy Davis-Stone, Department of Insurance; Julie Brooks, Department for Public Health; Brittany Allen, Justin Dearing, Department of Behavioral Health, Developmental and Intellectual Disabilities; and Laura Begin, Department for Community Based Services.

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

The Administrative Regulation Review Subcommittee met on Tuesday, August 10, 2021, and submits this report:

Administrative Regulations Reviewed by this Subcommittee:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: Administrative Certificates

16 KAR 3:060. School counselor, provisional and standard certificates, all grades. Cassie Trueblood, counsel and policy advisor, represented the board.

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

Educator Preparation

16 KAR 5:020. Standards for admission to educator preparation.

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

Alternative Routes to Certification

16 KAR 9:090. University based alternative certification program for teachers of world languages.

A motion was made and seconded to approve the following amendments: to amend the TITLE, the RELATES TO paragraph, and Sections 2, 4 through 6, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems: General Rules

105 KAR 1:270. Federal tax withholding or direct rollover of funds for eligible distributions. Carrie Bass, staff attorney supervisor, and Michael Board, executive director, represented the systems.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph, Sections 1 through 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.

BOARDS AND COMMISSIONS: Board of Medical Licensure

201 KAR 9:290. Interpretation and application of KRS 311.901(1) and KRS 311.903(4). Leanne Diakov, counsel, and Dr. Fuchs, member, Athletic Trainer Subcommittee, represented the board.

A motion was made and seconded to approve the following amendments: to amend the TITLE, the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs, and Sections 1, 3, 4, 8, and 10 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.

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM:
Board of Emergency Medical Services**

202 KAR 7:201. Emergency Medical Responders. Robert Andrew, director of education and training; Phil Dietz, board chair; Chuck O’Neal, deputy executive director; and John Wood, attorney, represented the board.

202 KAR 7:301. Emergency Medical Technician.

202 KAR 7:330. Advanced Emergency Medical Technician.

202 KAR 7:401. Paramedics.

202 KAR 7:540. Emergency Medical Services data collection, management, and compliance.

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

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 5, 8, 11, and 17 to comply with the drafting and formatting 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: Fish**

301 KAR 1:201. Taking of fish by traditional fishing methods. Dave Dreves, fisheries director; Steven Fields, staff attorney; and Chris Garland, division director, represented the department.

A motion was made and seconded to approve the following amendment: to amend Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, the amendment was approved.

Game

301 KAR 2:132. Elk hunting seasons, permits, zones, and requirements.

In response to a question by Co-Chair Hale, Mr. Garland stated that, in the past, there had been problems with elk causing property damage. Hunting pressure had caused elk to shift their behavior, and the property damage had no longer been a major issue. The department had not received requests for permits related to elk damage to property; therefore, those provisions were being deleted.

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

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers.

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

301 KAR 2:300. Black bear seasons and requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 9 and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Administration

601 KAR 2:233. Kentucky Ignition Interlock Program; participants and device providers. Matt Cole, commissioner; Tiffany Duvall, budget specialist; Jon Johnson, assistant general counsel; and Larisa Plecha, staff attorney, represented the department.

In response to a question by Co-Chair West, Mr. Johnson stated that this administrative regulation was in response to Senate Bill 85 from the 2019 Regular Session of the General Assembly.

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

701 KAR 5:100. School-based decision making guidelines. Todd Allen, general counsel; Dr. Matthew Courtney, policy advisor; and Dr. Kelly Foster, associate commissioner, represented the board.

In response to questions by Co-Chair West, Dr. Foster stated that this administrative regulation consolidated requirements, clarified procedures, created a timeline for submission of the school-based decision making model application, established a standardized effective date for newly approved site-based models, and aligned provisions with those in the authorizing statute. Dr. Courtney stated that the alternative model application process was being streamlined to reduce paperwork. Districts would be able to have nonvoting members without submitting applications for those members. Dr. Foster stated that nonvoting members sometimes included students, classified instructional members, certified teachers, and other school staff members. It was unnecessary for nonvoting members to complete applications. Changes to this administrative regulation complied with the authorizing statute.

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

LABOR CABINET: Office of Unemployment Insurance

787 KAR 1: 360. Overpayment waivers. Erin Bravo, deputy general counsel; Sam Flynn, general counsel; and Anthony Hudgins, deputy executive director, represented the office.

In response to a question by Co-Chair West, Mr. Flynn stated that this administrative regulation was necessitated by Senate Bill 7 from the 2021 Regular Session of the General Assembly.

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 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.

Department of Workplace Standards: Occupational Safety and Health

803 KAR 2:011. Repeal of 803 KAR 002:018. Sam Flynn, general counsel; Robin Maples, occupational safety and health standards specialist; and Chuck Stribling, federal – state coordinator, represented the department.

803 KAR 2:041. Repeal of 803 KAR 002:040.

803 KAR 2:060. Employer responsibility to post notice.

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

803 KAR 2:062. Employer responsibility when employee is exposed to toxic substances or harmful physical agents.

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

803 KAR 2:070. Inspections.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:110. Employer and employee representatives.

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.

803 KAR 2:122. Abatement.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 3, 5 through 9, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to add Section 10 related to incorporated material. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:125. Posting of citation.

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.

803 KAR 2:127. Failure to correct violation.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 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.

803 KAR 2:130. Informal conference.

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

803 KAR 2:140. Contest of citation.

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

803 KAR 2:170. Variance and interim order.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 2 through 6, 8 through 11, and 14 through 25 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:181. Recordkeeping and reporting occupational injuries and illnesses.

803 KAR 2:220. Refusal to work when dangerous condition exist.

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.

803 KAR 2:230. Pay during inspection activity.

803 KAR 2:250. Discrimination.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 and 3 through 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:306. Occupational health and environmental control.

803 KAR 2:308. Personal protective equipment.

803 KAR 2:310. Medical services and first aid.

803 KAR 2:423. Stairways and ladders.

803 KAR 2:435. Supply lines in excess of 600 volts.

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

803 KAR 2:440. Cranes and derricks in construction.

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

Department of Workers' Claims

803 KAR 25:021. Individual self-insurers. Sam Flynn, general counsel; John Ghaelian, general counsel; Dale Hamblin, assistant general counsel; and Robert Walker, commissioner, represented the department.

In response to a question by Co-Chair West, Mr. Hamblin stated that this administrative regulation did not make self-insurance more difficult. Provisions were added for voluntarily surrendering a certificate.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1 through 3 and 5 through 13 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to add a Web link to the agency's forms. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 25:091. Workers' compensation hospital fee schedule.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 3, 8, and 9 to comply with the drafting requirements of KRS Chapter 13A; and (2) to delete: (a) two (2) definitions; and (b) provisions for reimbursement for

surgical implants and surgical hardware. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 25:220. Guaranty funds.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to delete outdated language; and (2) to amend Section 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.

PUBLIC PROTECTION CABINET: Department of Insurance: Trade Practices and Frauds

806 KAR 12:095. Unfair claims settlement practices for property and casualty insurance. Abigail Gall, regulation coordinator, and Elizabeth Stone, general counsel, represented the department.

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

Life Insurance and Annuity Contracts

806 KAR 15:090. Notice of rights as an owner of a life insurance policy.

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.

Health Insurance Contracts

806 KAR 17:580. Definition of health care provider.

In response to a question by Co-Chair West, Ms. Stone stated that the department added a definition for pharmacies because “licensed pharmacist” was already defined. This would require insurance companies to enter into insurance contracts with pharmacies that wished to do so.

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

Workers' Compensation Self-Insured Groups

806 KAR 52:030. Workers' compensation self-insured group rate, rule and for filings.

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

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

902 KAR 2:221E. Repeal of 902 KAR 002:220. Julie Brooks, regulation coordinator, represented the department.

Department for Behavioral Health, Developmental and Intellectual Disabilities: Substance Abuse

908 KAR 1:390. Voluntary Employer Substance Use Program (VESUP). Dr. Brittany Allen, division director, and Justin Dearing, program administrator, represented the department.

Department for Community Based Services: Supplemental Nutrition Assistance Program

921 KAR 3:026E. Repeal of 921 KAR 003:025. Laura Begin, regulation coordinator, represented the department.

921 KAR 3:027E. Technical requirements.

The following administrative regulations were deferred or removed from the August 10, 2021, subcommittee agenda:

STATE BOARD OF ELECTIONS: Statewide Voter Registration

31 KAR 3:010. Current address of Kentucky registered voters and distribution of voter registration lists.

Kentucky Infrastructure Authority

200 KAR 17:110E. Guidelines for Kentucky Infrastructure Authority Drinking Water and Wastewater Grant Program.

BOARDS AND COMMISSIONS: Board of Medical Licensure

201 KAR 9:270. Professional standards for prescribing, dispensing, or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

Board of Licensure for Professional Art Therapists

201 KAR 34:070. Inactive status.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Motor Vehicle Commission

605 KAR 1:030. Applications.

605 KAR 1:035. Facilities requirements.

605 KAR 1:130. Procedures.

605 KAR 1:215. Licensing fees.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Exceptional and Handicapped Programs

707 KAR 1:340. Procedural safeguards and state complaint procedures.

LABOR CABINET: Department of Workplace Standards: Occupational Safety and Health

803 KAR 2:325. General industry standards.

Workers' Claims

803 KAR 25:165. Electronic data interchange vendor approval.

803 KAR 25:170. Filing of claims information with the Office of Workers' Claims.

803 KAR 25:175. Filing of insurance coverage and notice of policy change or termination.

803 KAR 25:185. Procedure for E-mail notification of cancellation or removal of location of specific workers' compensation coverage.

803 KAR 25:190. Utilization review – Medical Bill Audit – Medical Director – Appeal of Utilization Review Decisions.

PUBLIC PROTECTION CABINET: Department of Insurance: Fees and taxes

806 KAR 4:010. Fees of the Department of Insurance.

Agents, Consultants, Solicitors, and Adjustors

806 KAR 9:025. Licensing process.

Trade Practices and Frauds

806 KAR 12:120. Suitability in annuity transactions.

Rates and Rating Organizations

806 KAR 13:150. Property and casualty rate and rule filings.

Health Insurance Contracts

806 KAR 17:070. Filing procedures for health insurance rates.

806 KAR 17:085. Minimum standards for short-term nursing home insurance policies.

806 KAR 17:100. Certificate of filing for provider-sponsored networks.

806 KAR 17:150. Health benefit plan rate filing requirements.

806 KAR 17:230. Requirements regarding medical director's signature on health care benefit denials.

806 KAR 17:511. Repeal of 806 KAR 017:005, 806 KAR 017:095, 806 KAR 017:170, 806 KAR 017:180, and 806 KAR 017:510.

**ENERGY AND ENVIRONMENT CABINET: Public Service Commission:
Utilities**

807 KAR 5:015. Access and attachments to utility poles and facilities.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Payments and Services

907 KAR 3:005. Coverage of physicians' services.

907 KAR 3:010. Reimbursement for physicians' services.

907 KAR 3:060. Ambulance provider assessment program.

Department for Community Based Services: Supplemental Nutrition Assistance Program

921 KAR 3:060. Administrative disqualification hearings and penalties.

Child Welfare

922 KAR 1:300. Standards for child-caring facilities.

922 KAR 1:380. Standards for emergency shelter child-caring facilities.

922 KAR 1:390. Standards for residential child-caring facilities.

The subcommittee adjourned at 1:40 p.m. The next meeting of this subcommittee is tentatively scheduled for September 14, 2021, at 1 p.m.