

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the April Meeting

April 13, 2022

Call to Order and Roll Call

The April meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, April 13, 2022, at 8:00 AM, in Room 154 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; Representatives Randy Bridges and Mary Lou Marzian.

Guests: Daniel Leffel, Executive Advisor, Kenneth Urlage, Chair, and Kevin Winstead, Commissioner, Board of Licensure for Long-Term Care Administrators; Kelly Jenkins, Executive Director and Jeffrey Prather, General Counsel, Board of Nursing; Stephen Curley, Executive Director and Keith Poynter, General Counsel, Board of Physical Therapy; Melissa Duff, Environmental Scientist Consultant and Michael Kennedy, Director, Energy and Environment Cabinet; Michelle DeJohn, Executive Director and Oran Scotty McFarlan, Staff Attorney, Education and Workforce Development Cabinet; DJ Wasson, Chief of Staff, Public Protection Cabinet; Shan Dutta, Deputy General Counsel, Jamie Eads, Deputy Executive Director, Marc Guilfoil, Executive Director, and Jennifer Wolsing, General Counsel, Horse Racing Commission; Sarah Cooper, Assistant Director, Krista Quarles, Policy Specialist, and Kelli Rodman, Executive Director, Cabinet for Health and Family Services; Kim Minter, Staff Assistant, Melea Rivera, Assistant Director, and Edith Slone, Division Director, Office of Health Data and Analytics; Erica Brakefield, Section Supervisor, Julie Brooks, Regulation Coordinator, Jennifer Burt, Branch Manager, and Jessica Davenport, Inspection Program Evaluator; Department for Public Health; Scott Brinkman, Manager, Connecting the Dots Policy Solutions, LLC; and Craig Ross, President, Kentucky Kingdom, Herschend Entertainment Company, LLC.

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 Wednesday, April 13, 2022, and submits this report:

Administrative Regulations Reviewed by this Subcommittee:

BOARDS AND COMMISSIONS: Board of Licensure for Long-Term Care Administrators

201 KAR 006:040. Renewal, reinstatement, and reactivation of license. Daniel Leffel, executive advisor, and Kevin Winstead, commissioner, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 3 and 5 through 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Nursing

201 KAR 020:220. Nursing continuing education provider approval. Kelly Jenkins, executive director and Jeffrey Prather, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 4, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 020:280. Standards for developmental status, initial status, and approval of pre-licensure registered nurse and practical nurse programs.

A motion was made and seconded to approve the following amendments: to amend to: (1) list the national organizations from which accreditation shall be obtained; and (2) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 020:360. Continuing approval and periodic evaluation of prelicensure registered nursing and licensed practical nursing programs.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to list the national organizations from which accreditation shall be obtained; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 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.

Board of Physical Therapy

201 KAR 022:001. Definitions for 201 KAR Chapter 022. Stephen Curley, executive di-rector, and Keith Poynter, general counsel, represented the board.

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

201 KAR 022:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, and 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 Medical Imaging and Radiation Therapy

201 KAR 046:020. Fees. Elizabeth Morgan, executive director, represented the board.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Attainment and Maintenance of the National Ambient Air Quality Standards

401 KAR 051:010. Attainment status designations. Melissa Duff, environmental scientist consultant, Michael Kennedy, division director, represented the division.

In response to a question by Co-Chair West, Ms. Duff stated that the previous version of this administrative regulation did not include boundaries for sulfur dioxide (SO). Boundaries for SO were established to include Henderson and Webster Counties.

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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET:
Apprenticeship Standards

787 KAR 003:020. Confidentiality of records of the Office of Employer and Apprenticeship Services. Michelle Dejon, executive director and Oran McFarlan, staff attorney, represented the cabinet.

A motion was made and seconded to approve the following amendments: (1) to add a definition section; (2) to add a new Section 3 to establish provisions for publicly available information; and (3) 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.

PUBLIC PROTECTION CABINET: General

800 KAR 001:020E. Team Western Kentucky Tornado Relief Fund. DJ Wasson, chief of staff, represented the cabinet.

In response to questions by Co-Chair West, Ms. Wasson stated that this fund distributed private and corporate donations directly to affected individuals. Transparency was ensured through the press, the fact that the fund was subject to audit, and through the oversight of local governments and local government leaders. Initially, distributions were made, in addition to FEMA distributions, to cover funeral expenses and for immediate repairs and sheltering needs. The fund was now beginning to focus on rebuilding efforts. The fund currently had received approximately \$51 million in donations and had distributed approximately \$10 million.

In response to questions by Co-Chair Hale, Ms. Wasson stated that the cabinet would follow up with information for this subcommittee regarding FEMA resources and their distribution. This fund first distributed monies for immediate needs based on a national model. Then, the fund would work with local governments and local leaders to address reconstruction efforts. Co-Chair Hale stated that it often took many years to rebuild after these types of events.

PUBLIC PROTECTION CABINET: Horse Racing Commission: Incentive and Development Funds

810 KAR 007:050. Kentucky Horse Breeders' Incentive Fund. Shan Dutta, deputy general counsel; Jamie Eads, deputy executive director; and Jennifer Wolsing, general counsel, represented the commission.

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

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Data Analytics: Guaranteed Acceptance Program (GAP)

900 KAR 013:010. Guaranteed Acceptance Program (GAP) reporting requirements. Kim Minter, staff assistant; Melea Rivera, assistant director; and Edith Sloan, division director, represented the office.

Department for Public Health: Sanitation

902 KAR 010:120. Kentucky public swimming and bathing facilities. Erica Brakefield, section supervisor; Julie Brooks, regulation coordinator; Jennifer Burt, branch manager; and Jessica Davenport, Inspection Program evaluator, represented the department. Scott Brinkman, manager, Connecting the Dots Policy Solutions, LLC, and Craig Ross, president, Kentucky Kingdom appeared in conditional support of this administrative regulation.

In response to questions by Co-Chair West, Ms. Brooks stated that the department had met with stakeholders to develop the proposed agency amendments. Newer legislation required a separate administrative regulation, 902 KAR 010:190, to address splash pads that were operated by local governments.

Mr. Brinkman stated that, with the proposed agency amendments, this administrative regulation met the needs of stakeholders. There were residual concerns that involved safety equipment with which the department agreed to assist stakeholders in the short term.

Mr. Ross stated that Kentucky Kingdom prioritized safety above all else and followed worldwide safety standards.

At the February 7, 2022, meeting of this subcommittee, a motion was made and seconded to approve the following amendments: (1) to amend Section 1 to define terms; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 14 and 16 through 22 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved at that subcommittee meeting.

A motion was made and seconded to approve the following amendments: (1) to amend Section 12 to delete beach lifeguard requirements and insert provisions that: (a) allow a facility to submit an alternative lifeguard staffing plan if it meets certain requirements; (b) require lifeguards at all bathing beaches that allow bathers 17 years of age or younger without a responsible adult; (c) require that there be one lifeguard per 100 linear feet of beachfront or a fraction thereof; (d) require bathing beaches to post warning signs if lifeguards are not provided; and (e) require one lifeguard per inflatable water attraction, with additional lifeguards to ensure all areas surrounding the attraction are clearly visible at all times; and (2) to amend Section 13 to require that: (a) lifesaving equipment be centrally located in a conspicuous place that is readily accessible, instead of requiring it to be located at each life-guard chair; and (b) the lifeboat be located in the most central location, instead of being required at the most centrally stationed lifeguard chair. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 010:121. Plan review, annual permitting, and inspection fees for public swimming and bathing facilities, including splash pads operated by local governments.

A motion was made and seconded to approve the following amendments: to amend Section 1 to require that the annual inspection fee be assessed based upon linear footage of beach-front, instead of linear square footage of beachfront. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 010:190. Splash pads operated by local governments. At the February 7, 2022, meeting of this subcommittee, a motion was made and seconded to approve the following amendments: (1) to amend Section 1 to define terms; and (2) to amend the RELATES TO paragraph and Sections 1, 2, 4, 7 through 12, 15, 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 at that subcommittee meeting.

The following administrative regulations were deferred or removed from the April 13, 2022, subcommittee agenda:

DEPARTMENT OF LAW: Medical Examination of Sexual Abuse Victims

040 KAR 003:020. Protocol for operation of local multidisciplinary teams on child sexual abuse.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:430. Emergency orders and hearings.

201 KAR 002:440. Legend drug repository.

Board of Nursing

201 KAR 020:260E. Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing.

201 KAR 020:480E. Licensure of graduates of foreign nursing schools.

Board of Alcohol and Drug Counselors

201 KAR 035:070. Supervision experience.

Applied Behavior Analysis Licensing Board

201 KAR 043:010. Application procedures for licensure.

201 KAR 043:020. Application procedures for temporary licensure.

201 KAR 043:030. Fees.

201 KAR 043:040. Code of ethical standards and standards of practice.

201 KAR 043:050. Requirement for supervision.

201 KAR 043:060. Complaint and disciplinary process.

201 KAR 043:071. Repeal of 201 KAR 043:070.

201 KAR 043:080. Renewals.

201 KAR 043:090. Voluntary inactive and retired status.

201 KAR 043:100. Telehealth and telepractice.

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

301 KAR 004:001. Selection of Fish and Wildlife Resources Commission nominees.

301 KAR 004:010. Districts.

301 KAR 004:020. Ballard Wildlife Management Area restrictions.

301 KAR 004:100. Peabody Wildlife Management Area use requirements and restrictions.

301 KAR 004:110. Administration of drugs to wildlife.

**JUSTICE AND PUBLIC SAFETY CABINET: Department of State Police: Driver
Training**

502 KAR 010:010. Definitions.

502 KAR 010:020. Department facilities; facility inspection; conflict of interest.

502 KAR 010:030. Instructor's license.

502 KAR 010:035. Commercial driver's license skill testing.

502 KAR 010:040. Training school facilities.

502 KAR 010:050. Contracts and agreements.

502 KAR 010:060. School advertising.

502 KAR 010:070. Training vehicle, annual inspection.

502 KAR 010:080. License suspension, revocation, denial.

502 KAR 010:090. Procedure for denial, suspension, nonrenewal or revocation hearings.

502 KAR 010:110. Third-party CDL skills test examiner standards.

502 KAR 010:120. Hazardous materials endorsement requirements.

Concealed Deadly Weapons

502 KAR 011:010. Application for license to carry concealed deadly weapon.

502 KAR 011:060. License denial and reconsideration process.

502 KAR 011:070. License revocation and suspension notice and reinstatement process.

Law Enforcement Officers Safety Act of 2004

502 KAR 013:010. Application for certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

502 KAR 013:030. Range qualification for certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

502 KAR 013:040. Issuance, expiration, and renewal of certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

502 KAR 013:050. Replacement of licenses to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 (“LEOSA”), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

502 KAR 013:060. Change of personal information regarding certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 (“LEOSA”), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

502 KAR 013:080. Incomplete application for certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 (“LEOSA”), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

Criminal History Record Information System

502 KAR 030:010. Criminal History Record Information System.

502 KAR 030:020. Arrest and disposition reporting procedure.

502 KAR 030:030. Audit of Criminal History Record Information System.

502 KAR 030:050. Security of centralized criminal history record information.

502 KAR 030:060. Dissemination of criminal history record information.

502 KAR 030:070. Inspection of criminal history record information by record subject.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Education: Office of Learning Support Services

704 KAR 007:170. Corporal punishment.

Alternative Education Programs

704 KAR 019:002. Alternative education programs.

Department of Workforce Investment: Office of Vocational Rehabilitation

781 KAR 001:010. Office of Vocational Rehabilitation appeal procedures.

781 KAR 001:020. General provisions for operation of the Office of Vocational Rehabilitation.

781 KAR 001:030. Order of selection and economic need test for vocational rehabilitation services.

781 KAR 001:040. Rehabilitation technology services.

781 KAR 001:050. Carl D. Perkins Vocational Training Center.

Office for the Blind

782 KAR 001:010. Kentucky Business Enterprises.

782 KAR 001:070. Certified driver training program.

Kentucky Commission on Proprietary Education

791 KAR 001:010. Applications, permits, and renewals.

791 KAR 001:020. Standards for licensure.

791 KAR 001:025. Fees.

791 KAR 001:027. School record keeping requirements

791 KAR 001:030. Procedures for hearings.

791 KAR 001:035. Student protection fund.

791 KAR 001:040. Commercial driver license training school curriculum and refresher course.

791 KAR 001:050. Application for license for commercial driver license training school.

791 KAR 001:060. Application for renewal of license for commercial driver license training school.

791 KAR 001:070. Commercial driver license training school instructor and agency application and renewal procedures.

791 KAR 001:080. Maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver license training schools.

791 KAR 001:100. Standards for Kentucky resident commercial driver training school facilities.

791 KAR 001:150. Bond requirements for agents and schools.

791 KAR 001:155. School closing process.

791 KAR 001:160. Transfer of ownership, change of location, change of name, revision of existing programs.

LABOR CABINET: Department of Workplace Standards: Labor Standards; Wages and Hours

803 KAR 001:005. Employer-employee relationship.

803 KAR 001:006. Employer-employee relationship.

803 KAR 001:025. Equal pay provisions, meaning and application.

803 KAR 001:026. Equal pay provisions, meaning and application.

803 KAR 001:060. Overtime pay requirements.

803 KAR 001:061. Overtime pay requirements.

803 KAR 001:063. Trading time.

803 KAR 001:064. Trading time.

803 KAR 001:065. Hours worked.

803 KAR 001:066. Recordkeeping requirements.

803 KAR 001:067. Hours worked.

803 KAR 001:068. Recordkeeping requirements.

803 KAR 001:070. Executive, administrative, supervisory or professional employees; salesmen.

803 KAR 001:071. Executive, administrative, supervisory or professional employees; salesmen.

803 KAR 001:075. Exclusions from minimum wage and overtime.

803 KAR 001:076. Exclusions from minimum wage and overtime.

803 KAR 001:080. Board, lodging, gratuities and other allowances.

803 KAR 001:081. Board, lodging, gratuities and other allowances.

803 KAR 001:090. Workers with disabilities and work activity centers' employee's wages.

803 KAR 001:091. Workers with Disabilities and Work Activities Centers' employee's wages.

PUBLIC PROTECTION CABINET: Department of Insurance: Health Insurance Contracts

806 KAR 017:350. Life insurance and managed care.

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

900 KAR 005:020E. State Health Plan for facilities and services.

Certificate of Need

900 KAR 006:075E. Certificate of need nonsubstantive review.

Health Services and Facilities

902 KAR 020:016. Hospitals; operations and services.

902 KAR 020:018. Operation and services; end-stage renal disease facilities.

902 KAR 020:106. Operation and services; ambulatory surgical center.

Office of Inspector General

906 KAR 001:110. Critical access hospital services.

Department for Medicaid Services: Outpatient Pharmacy Program

907 KAR 023:020. Reimbursement for outpatient drugs.

Department for Community Based Services: Child Welfare

922 KAR 001:360. Private Child care placement, levels of care, and payment.

922 KAR 001:470. Central registry.

922 KAR 001:530. Post-adoption placement stabilization services.

Day Care

922 KAR 002:280. Background checks for child care staff members, reporting requirements, and appeals.

Adult Services

922 KAR 005:070. Adult protective services.

The subcommittee adjourned at 8:35 a.m. The next meeting of this subcommittee was tentatively scheduled for May 10, 2022, at 1 p.m.