

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the May Meeting

May 10, 2022

Call to Order and Roll Call

The May meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, May 10, 2022, at 1:00 PM, in Room 149 of the Capitol Annex. Representative David Hale, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Stephen West, Co-Chair; Representative David Hale, Co-Chair; Senators Julie Raque Adams, Ralph Alvarado, and David Yates; Representatives Randy Bridges, Deanna Frazier Gordon, and Mary Lou Marzian.

Guests: Steven Pulliam, General Counsel, Executive Branch Ethics Commission; Christopher Harlow, Executive Director, Kentucky Board of Pharmacy; Kevin Winstead, Commissioner, Department of Professional Licensing; Kelly Jenkins, Executive Director and Jeffrey Prather, General Counsel, Kentucky Board of Nursing; Stephen Curley, Executive Director, Kentucky Board of Physical Therapy; Lora Arnold Parks, Chair, August Pozgay, Board Counsel, Kentucky Board of Licensure and Certification for Dietitians and Nutritionists; Tim Cesario, Chairman, Kentucky Board of Alcohol and Drug Counselors; Elizabeth Morgan, Executive Director, Board of Medical Imaging and Radiation Therapy; Steven Fields, Staff Attorney, Rich Storm, Commissioner, and Jenny Gilbert, Executive Assistant, Kentucky Department of Fish and Wildlife Resources; Todd Allen, General Counsel and Matthew Courtney, Policy Advisor, Kentucky Department of Education; Duane Hammons, Assistant Director and John Ghaelian, General Counsel, Kentucky Labor Cabinet; Kevin Sharkey, Staff Attorney and Frankie Huffman, Board Member, Kentucky Protection and Advocacy for Individuals with Developmental Disabilities Board; Tom Underwood, State Director, National Federation of Independent Business; Rachael Ratliff, Regulations Coordinator, Department for Behavioral Health, Development and Intellectual Disabilities; Laura Begin, Staff Assistant, Misty Sammons, Division Director, and Andrea Day, Assistant Director, Department for Community Based Services.

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

The Administrative Regulation Review Subcommittee met on Tuesday, May 10, 2022, and submits this report:

The subcommittee determined that the following administrative regulation was deficient pursuant to KRS 13A.030(2)(a):

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

803 KAR 001:006. Employer-employee relationship. John Ghaelian, general counsel, and Duane Hammons, assistant director, represented the department. Tom Underwood, state director, National Federation of Independent Businesses, appeared in opposition to this administrative regulation.

In response to questions by Co-Chair West, Mr. Hammons stated that the existing framework to determine an employer – employee relationship, consisted of a series of questions to be considered through a holistic approach. This version updated the questions to add consideration of permanency of the working relationship. These questions were commensurate with the federal standards; however, Kentucky did not necessarily have to comply with these federal standards. The issue of determining an employer – employee relationship, without the permanency component, had led to numerous misclassifications. Anyone classified as an independent contractor was not subject to the provisions of KRS Chapter 337.

In response to questions by Representative Bridges, Mr. Hammons stated that this administrative regulation was intended to protect employees from nonpayment of wages and other violations of KRS Chapter 337. Clarity was needed to aid in the determination of employer – employee relationships. Representative Bridges stated that this could force those who had chosen to be independent contractors into being classified as employees. Mr. Ghaelian stated that no one factor was weighted more strongly than the others in making this holistic determination. The wishes of a person who chose to be classified as an independent contractor were part of the consideration process. Representative Bridges stated that this was subjective, vague, and gave more power to the Labor Cabinet, rather than to the individual, regarding classification. Additionally, this seemed like a statutory, not a regulatory issue because the legislature had considered this issue in the past and had not passed this type of legislation.

Senator Yates stated that it was important to have clear standards for determining the employer – employee relationship. This administrative regulation was commensurate with federal standards and standards used by the court system. In response to a question by Senator Yates, Mr. Hammons stated that this version was for clarification based on the federal standards and legal precedents.

In response to questions by Senator Raque Adams, Mr. Hammons stated that the problem of misclassification had become more prevalent for the department for at least the past four years. Mr. Ghaelian stated that this administrative regulation received public

comments from two commenters. The need for clarity precipitated this change in conjunction with this administrative regulation needing an amendment due to sunset provisions.

In response to a question by Co-Chair West, Mr. Ghaelian stated that the intent of this administrative regulation was to clarify the employer – employee relationship.

In response to a question by Co-Chair Hale, Mr. Underwood stated that this version of this administrative regulation would make the process of determining the employer – employee relationship more ambiguous, not less. Small businesses could be negatively impacted, and this version might create a chilling effect regarding hiring small businesses.

In response to a question by Co-Chair West, Mr. Underwood stated that most small businesses, especially sole proprietors, were independent contractors. Small businesses were concerned that they might become classified as employees. Most small businesses did not have compliance officers available to ensure compliance with KRS Chapter 337.

Senator Yates stated that, if permanency was already a standard used in adjudicating employment matters, it would seem not to change provisions if it were added to this administrative regulation. The department would consider the totality of the relationship, including things like future contract expectations. In response, Mr. Underwood stated that there was a major labor shortage state wide, and this administrative regulation could cause unintended harm.

In response to a question by Co-Chair Hale, Mr. Underwood requested that this administrative regulation be deferred.

In response to a question by Co-Chair West, Mr. Ghaelian stated that this administrative regulation was codifying requirements already used by the court system.

In response to questions by Co-Chair West, Senator Yates stated that “totality of the circumstances” was the phrased used in case law. Mr. Ghaelian stated that this administrative regulation was to comply with certification requirements and to clarify requirements. The department preferred not to defer.

In response to questions by Senator Yates, Mr. Ghaelian stated that the department would prefer not to defer consideration of this administrative regulation. Deferral might pose a problem because the corresponding administrative regulation will expire in September.

Senator Alvarado stated that this issue had been proposed by the General Assembly in the past without legislation being passed, which implied that this administrative regulation was inappropriate.

In response to questions by Senator Raque Adams, Mr. Ghaelian stated that the department did not amend this administrative regulation in response to the public comments, which were considered by the agency. The department preferred not to defer.

Representative Bridges stated that this matter should be established through statute, not administrative regulation. The cabinet was stepping beyond its authority. The department should consider deferral. It was the cabinet's responsibility to enforce decisions made by the legislature, and more stakeholders needed to be involved in the development of these policies. This would do a disservice to independent contractors and employers.

In response to a question by Co-Chair Hale, Mr. Ghaelian stated that the agency respectfully did not agree to defer.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 5 to comply with the drafting requirements of KRS Chapter 13A.

Senator Alvarado made a motion, seconded by Co-Chair West, to find this administrative regulation deficient. A roll call vote was conducted and, with six (6) votes to find this administrative regulation deficient and two (2) votes against deficiency, this administrative regulation was found deficient.

Representative Bridges explained his yes vote. He would have preferred that this administrative regulation had been deferred. This was an attempt to make, rather than enforce, the law.

Senator Yates explained his no vote. There seemed to be authority for this administrative regulation, but he stated that he was disappointed that the agency would not defer.

Co-Chair West explained his yes vote. This finding of deficiency meant that this administrative regulation was on a fast track to be found null, void, and unenforceable by the General Assembly.

Co-Chair Hale explained his yes vote. This subcommittee did not like to find administrative regulations deficient and did so only rarely. There had been sufficient opportunity for deferral; therefore, deficiency was the only option left to this subcommittee.

Compiler's Note: Pursuant to KRS 13A.335(3)(a), a new Section 7 was added to this administrative regulation to reflect the finding of deficiency.

Administrative Regulations Reviewed by this Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Executive Branch Ethics Commission

009 KAR 001:070. Standards of ethical conduct for transition team members and disclosure form. Steven Pulliam, general counsel, represented the commission.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to delete the Transition Team Lead Designation form, which did not seem to be statutorily required. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:440. Legend drug repository. Chris Harlow, executive director, represented the board.

In response to questions by Representative Marzian, Mr. Harlow stated that this program authorized the donation of high-cost prescription medications by pharmacies and patients for distribution to indigent patients.

In response to questions by Senator Yates, Mr. Harlow stated that donated prescription medications must be unexpired and in the original packaging. Donated prescription medications included treatments for a range of conditions and were not limited to specific conditions.

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 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.

Board of Speech-Language Pathology and Audiology

201 KAR 017:110. Telehealth and telepractice. Kevin Winstead, commissioner, represented the board.

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

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

Board of Nursing

201 KAR 020:260E. Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing. Jeff Prather, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend: (1) the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 and 3 to conform to Senate Bill 10 from the 2022 Regular Session of the General Assembly; and (2) Section 3(3)(a) and (b) for consistency with Executive Order 2021-913. Without objection, and with agreement of the agency, the amendments were approved.

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

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: (1) Senate Bill 10 from the 2022 Regular Session of the General Assembly; and (2) the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

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: (1) Senate Bill 10 from the 2022 Regular Session of the General Assembly; and (2) the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Physical Therapy

201 KAR 022:020. Eligibility and credentialing procedure. Stephen Curley, executive director, represented the board.

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

201 KAR 022:070. Requirements for foreign-educated physical therapists and physical therapist assistants.

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

201 KAR 022:170. Physical Therapy Compact Commission.

Board of Licensure and Certification for Dietitians and Nutritionists

201 KAR 033:015. Application; approved programs. Lora Parks, chair, and August Pozgay, counsel, represented the board.

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

Board of Alcohol and Drug Counselors

201 KAR 035:070. Supervision experience. Tim Cesario, chair, and Kevin Winstead, commissioner, represented the board.

In response to questions by Senator Yates, Mr. Cesario stated that there were two (2) categories of supervisors of entry-level counselors, CADC or LADC. Uncredentialed counselors received at least two (2) hours of supervision, consisting of case review, twice per month and direct supervision every six (6) months. Clinical supervisors were responsible for the supervisee's practice.

In response to questions by Co-Chair West, Mr. Cesario stated that, previously, an entry-level clinician was required to have at least a baccalaureate degree, in any degree subject. Senate Bill 191 from the 2020 Regular Session of the General Assembly authorized certain credentialing for those with at least a high school degree and under supervision; therefore, these supervisory provisions had added importance.

A motion was made and seconded to approve the following amendments: to amend: (1) the RELATES TO paragraph and Sections 1, 4, 11, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) Section 14 to update incorporated material. Without objection, and with agreement of the agency, the amendments were approved.

Board of Medical Imaging and Radiation Therapy

201 KAR 046:060. Continuing education requirements. Elizabeth Morgan, executive director, represented the board.

In response to a question by Co-Chair West, Ms. Morgan stated that this administrative regulation clarified that the process of developing continuing education materials shall not constitute continuing education itself.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, and CONFORMITY paragraph and Sections 2, 3, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 004:010. Districts. Jenny Gilbert, Office of the Commissioner; Steven Fields, staff attorney; and Rich Storm, commissioner, represented the department.

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

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

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to delete restrictions on firearms and dogs. Without objection, and with agreement of the agency, the amendments were approved.

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

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

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

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 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 CABINET: Board of Education: School Administration and Finance

702 KAR 003:090. Depository of board, collateral. Todd Allen, general counsel, and Matthew Courtney, policy advisor, represented the board.

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.

Department of Education: Office of Learning Support Services

704 KAR 007:170. Corporal punishment.

In response to questions by Co-Chair West, Mr. Courtney stated that the 2019 School Safety and Resiliency Act required school districts to create provisions for trauma-informed disciplinary strategies. Corporal punishment was statutorily authorized, and this administrative regulation established safety guidelines for its use, including a standard definition for “corporal punishment” and exemptions from corporal punishment for certain students, including students in foster care, homeless students, and students with an Individualized Education Program (IEP). Children in foster care were already excluded from corporal punishment in other settings, and this administrative regulation carried that forward into educational settings for consistency. Parental notification and involvement were required for use of corporal punishment. Within the first five days of enrollment, parents must opt-in, rather than opting-out, for corporal punishment even to be considered for a student. Parental consent must also be specifically authorized verbally on the day that corporal punishment is administered. A trauma-informed disciplinary technique must be attempted first, with corporal punishment being an alternative technique. The 2019 School Safety and Resiliency Act was silent regarding corporal punishment. Numerous studies demonstrated that corporal punishment was ineffective long term and could create trauma. This administrative regulation increased parental involvement in disciplinary strategies. Most districts in Kentucky disallowed corporal punishment. Fifteen districts explicitly allowed corporal punishment or were silent on the issue. Of the 15 districts, only 4 explicitly authorized corporal punishment. The other 11 were silent on the matter. Corporal punishment alternatives were determined based on the trauma-informed tool kit available on the agency’s Web site and included various disciplinary resolution practices.

In response to questions by Senator Yates, Mr. Courtney stated that districts that allowed corporal punishment were required to establish policies that established limits on corporal punishment and established the instrument to be used to administer the punishment. The policy development required community input. This established community transparency and parental permission in order to mitigate liability. This administrative regulation also required data collection.

In response to a question by Representative Marzian, Mr. Courtney stated that parents, within the first five days of enrollment, must opt-in and be notified for permission the day that corporal punishment is administered. A parent could withdraw permission for corporal punishment at any time.

In response to a question by Co-Chair Hale, Mr. Courtney stated that corporal punishment must be administered by a principal or vice principal only. The corporal punishment must be in the presence of a witness; however, a specific witness cannot be compelled to be a witness in order to prevent vicarious trauma.

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 Education Programs

704 KAR 019:002. Alternative education programs.

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.

Personnel System for Certified and Equivalent Employees

780 KAR 003:020. Compensation plan.

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

803 KAR 001:026. Equal pay provisions, meaning and application. John Ghaelian, general counsel, and Duane Hammons, assistant director, represented the department. Frankie Huffman, board member, Persons with Developmental Disabilities (PADD) Board, and Kevin Sharkey, staff attorney, Kentucky Protection and Advocacy, appeared in opposition to 803 KAR 1:091.

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

803 KAR 001:061. Overtime pay requirements.

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, 2, 5, and 8 through 13 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 001:064. Trading time.

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.

803 KAR 001:067. Hours worked.

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

803 KAR 001:068. Recordkeeping requirements.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 through 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 001:071. Executive, administrative, supervisory or professional employees; salesmen.

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, and 4 through 15 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 001:076. Exclusions from minimum wage and overtime.

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 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.

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

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.

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

In response to a question by Co-Chair Hale, Mr. Ghaelian stated that KRS 337.010 established an exemption from minimum wage requirements for sheltered workshops.

In response to a question by Co-Chair Hale, Mr. Sharkey stated that the PADD Board and Kentucky Protection and Advocacy requested that the cabinet repeal the existing administrative regulation regarding sheltered workshops and withdraw this newly filed version in order to phase out this program, as was done in Alaska. Sheltered workshops and subminimum wages were in conflict with the Americans with Disabilities Act. The federal government and several states were phasing out these programs, which included 14C certificates. Kentucky has also established supported Competitive Integrated Employment in communities, which should be the primary objective for disabled persons seeking employment. In the agency's Statement of Consideration for this administrative regulation, the cabinet stated that the agency was required to promulgate this administrative regulation; however, the authorizing statute established discretion to do so, not a mandate.

In response to a question by Co-Chair Hale, Mr. Huffman stated that he had a negative experience working in a sheltered workshop. He was supposed to receive \$10 per week; however, his pay was docked each time he dropped something. As a result, he once received only \$2 as pay. The sheltered workshop program initially began after World War II as a way for veterans to regain strength and return to community employment. That program morphed into today's subminimum wage workplace for disabled persons. Some workers had been in the program for 20 years.

In response to a question by Co-Chair Hale, Mr. Sharkey stated that Kentucky Protection and Advocacy requested that the agency repeal the existing administrative regulation and withdraw this administrative regulation, in order that the subminimum wage program for sheltered workshops be phased out. Senator Alvarado stated that he sponsored bills over the years to phase out the subminimum wage program for sheltered workshops. Some 14C certificate holders had taken advantage of disabled employees. Those who liked working in sheltered workshops would not be forced out because existing sheltered workshops could be grandfathered in. The goal was to mainstream sheltered workshop employees into community employment. There were concerns about adequate employment availability without the sheltered workshops. Mr. Sharkey stated that the authorizing statute was permissive, not mandatory. He requested that this administrative regulation be deferred.

In response to a question by Representative Bridges, Mr. Sharkey stated that he did not have specific employment data regarding states that had ended these programs; however, there was no indication of a detriment to employment in those states. Senator Yates stated that sheltered workshops could provide an opportunity for disabled people to gain employment skills. Sometimes the cost to these employers was higher than their revenue. There were also concerns about issues such as what had happened in Mr. Huffman's case. It might be beneficial to investigate federal funding and rebates that might improve this situation. There needed to be a balance between the compassionate, dignity of work and incentives for businesses.

In response to a question by Co-Chair West, Mr. Sharkey stated that this administrative regulation would allow new 14C certificates to be issued. Kentucky Protection and Advocacy believed that the agency had the authority to phase out this program by not having this administrative regulation.

In response to a question by Co-Chair Hale, Mr. Ghaelian stated that, after reviewing multiple statutes, the agency determined that it was required to promulgate this administrative regulation.

In response to a question by Co-Chair West and Representative Frazier-Gordon, Mr. Ghaelian stated that this administrative regulation would authorize new 14C certificates to be issued. Senator Alvarado stated that the goal was to mainstream sheltered workshop employees and grandfather in those who wished to remain working for sheltered workshops. He stated that it was his intention to keep sponsoring legislation to this end, but deferral of this administrative regulation did not seem to be an action that would assist the end goal. Co-Chair Hale stated that this subcommittee was limited, and there did not seem to be a consensus regarding deferral.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY

paragraphs and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A; and (2) to add Section 3 to incorporate material by reference. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Behavioral Health, Developmental and Intellectual Disabilities: Division of Program Integrity: Institutional Care

908 KAR 003:010E. Patient's rights. Rachael Ratliff, regulation coordinator, represented the division.

Department for Community Based Services: Child Welfare

922 KAR 001:470. Central registry. Laura Begin, regulation coordinator, and Andrea Day, assistant 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, and with agreement of the agency, the amendment was approved.

Day Care

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

A motion was made and seconded to approve the following amendments: to amend Sections 5, 6, and 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred or removed from the May 10, 2022, subcommittee agenda:

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:430. Emergency orders and hearings.

Board of Dentistry

201 KAR 008:600. Mobile dental facilities and portable dental units.

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.

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

803 KAR 001:060. Overtime pay requirements.

803 KAR 001:063. Trading time.

803 KAR 001:065. Hours worked.

803 KAR 001:066. Recordkeeping requirements.

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

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

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

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

Occupational Safety and Health

803 KAR 002:402. General safety and health provisions.

803 KAR 002:411. Scaffolds.

803 KAR 002:419. Demolition.

803 KAR 002:445. Confined spaces in construction.

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.

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

Certificate of Need

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

900 KAR 006:075. Certificate of Need nonsubstantive review.

Essential Personal Care Visitor Program

900 KAR 014:010E. Essential personal care visitor programs; visitation guidelines.

Department for Community Based Services: 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.

Child Welfare

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

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

Adult Services

922 KAR 005:070. Adult protective services.

The subcommittee adjourned at 3 p.m. The next meeting of this subcommittee was tentatively scheduled for June 14, 2022, at 1 p.m.