

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the June Meeting

June 14, 2022

Call to Order and Roll Call

The June meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, June 14, 2022, 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 Julie Raque Adams and Ralph Alvarado; Representatives Randy Bridges and Deanna Frazier Gordon.

Guests: Todd Allen, General Counsel, Education Professional Standards Board; Kelly Jenkins, Executive Director and Jeffrey Prather, General Counsel, Kentucky Board of Nursing; Ashley Clark, Chair, Kentucky Applied Behavioral Analysis and Licensing Board; Kevin Winstead, Commissioner, Department for Professional Licensing; John Wood, Attorney, Kentucky Board of Emergency Medical Services; Jenny Gilbert, Legislative Liaison and Rich Storm, Commissioner, Kentucky Department for Fish and Wildlife Resources; Brenn Combs, Staff Attorney, Justice and Public Safety Cabinet; Captain Bradley Arterburn, Commander, Criminal Identification and Records Branch; Adrian Jacob, Staff Attorney, Cora McNabb, Executive Director, and Dondra Meredith, Deputy General Counsel, Office of Vocational Rehabilitation; Robin Maples, OSH Standards Specialist, Department of Workplace Standards; Rebecca Rodgers Johnson, Executive Director and Oran McFarlan, Deputy Executive Director, Labor Cabinet; Marc Guilfoil, Executive Director, Shan Dutta, Deputy General Counsel, and Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission; Adam Mather, Inspector General, Kara Daniel, Deputy Inspector General, and Stephanie Brammer-Barnes, Regulations Coordinator, Office of Inspector General; Misty Sammons, Division Director, Stacy Carey, Branch Manager, and Laura Begin, Staff Assistant, 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, June 14, 2022, and submits this report:

Administrative Regulations Reviewed by this Subcommittee:

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

016 KAR 003:080. Career and technical education school principals. Todd Allen, counsel, represented the board.

BOARDS AND COMMISSIONS: Board of Nursing

201 KAR 020:070E. Licensure by examination. Kelly Jenkins, executive director, and Jeff Prather, general counsel, represented the board.

A motion was made and seconded to approve the following amendment: to amend Section 6 to comply with Senate Bill 2 from the 2021 Regular Session of the General Assembly. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 020:085. Licensure periods and miscellaneous requirements.

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

201 KAR 020:110. Licensure by endorsement.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 5 to comply with Senate Bill 10 from the 2022 Regular Session; and (2) to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 020:370. Applications for licensure.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to change from six (6) months to one (1) year, the date that an application for licensure by endorsement shall lapse if the application is not completed during that time frame for consistency with changes made to 201 KAR 20:240; and (2) to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Applied Behavior Analysis Licensing Board

201 KAR 043:010. Application procedures for licensure. Ashley Clark, chair, and Kevin Winstead, commissioner, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 3 to update material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to: (a) establish a two (2) year licensure period for temporary licenses with a one (1) time renewal option; and (b) cross-reference the renewal fees in 201 KAR 43:030; and (2) to amend the RELATES TO paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 043:030. Fees.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 3 to establish: (a) a two (2) year licensure period for temporary licenses with a one (1) time renewal option; and (b) a renewal fee of \$200 for temporary licensed behavior analysts and \$100 for temporary licensed assistant behavior analysts; and (2) to amend the STATUTORY AUTHORITY paragraph and Sections 3, 5, and 6 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 043:040. Code of ethical standards and standards of practice.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to delete unnecessary definitions; (2) to amend Section 4 to incorporate the ethics code by reference; and (3) to amend the RELATES TO paragraph and Sections 1 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 043:050. Requirement for supervision.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify and add definitions; (2) to amend Section 2 to require a supervisor to be listed as completing supervision training on the Behavior Analyst Certification Board's Certificant Registry; (3) to amend Section 3 to establish requirements for the supervisory plan; (4) to amend Section 14 to establish requirements for trainees; (5) to amend Section 15 and the material incorporated by reference to conform with regulatory

changes; and (6) to amend the RELATES TO paragraph and Sections 1 through 6 and 10 through 16 to: (a) clarify various provisions; (b) streamline requirements; and (c) 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 043:060. Complaint and disciplinary process.

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

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

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

201 KAR 043:080. Renewals.

A motion was made and seconded to approve the following amendment: to update material incorporated by reference. Without objection, and with agreement of the agency, the amendment was approved.

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

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

201 KAR 043:100. Telehealth and telepractice.

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

Board of Emergency Medical Services

202 KAR 007:545E. License classifications. John Wood, counsel, represented the board.

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

301 KAR 004:001. Selection of Fish and Wildlife Resources Commission nominees. Rich Storm, commissioner, represented the department.

In response to a question by Co-Chair Hale, Mr. Storm stated that changes were nonsubstantive and included technical corrections and revisions to align with Senate Bill 217 from the 2022 Regular Session of the General Assembly.

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 requirements of KRS Chapter 13A and Senate Bill 217 from the 2022 Regular Session of the General Assembly. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of State Police: Criminal History Record Information System

502 KAR 030:010. Criminal History Record Information System. Captain Bradley Arterburn, commander, Criminal Identification and Records Branch, and Brenn Combs, staff attorney, 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.

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

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

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

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

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

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

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

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

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. Dondra Meredith, deputy general counsel, and Cora McNabb, executive director, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 2, 4, 5, and 7 to comply with the drafting requirements of KRS Chapter 13A; and (2) to add Section 8 to incorporate by reference the Kentucky Office of Vocational Rehabilitation Policies and Procedures Manual. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 7 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.

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

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.

781 KAR 001:040. Rehabilitation technology services.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the RELATES TO; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 1 to: (a) add one (1) definition; (b) clarify two (2) definitions; and (c) delete one (1) definition; and (3) to amend Section 4 commensurate with the Kentucky Office of Vocational Rehabilitation Policies and Procedures Manual. Without objection, and with agreement of the agency, the amendments were approved.

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

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.

Office for the Blind

782 KAR 001:010. Kentucky Business Enterprises.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1 through 3 and 6 through 10 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 1 to add a definition for “vendor training program”; and (3) to amend Section 3 to add agency criteria for granting a leave of absence from a vending facility. Without objection, and with agreement of the agency, the amendments were approved.

782 KAR 001:070. Certified driver training program.

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

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

803 KAR 002:402. General safety and health provisions. Robin Maples, occupational safety and health standards specialist, and Oran McFarlan, deputy general counsel, represented the department.

803 KAR 002:411. Scaffolds.

803 KAR 002:419. Demolition.

803 KAR 002:445. Confined spaces in construction.

Administration

803 KAR 005:005. Employee access to or use of federal tax information; required criminal background check. Oran McFarlan, deputy general counsel, and Rebecca Rogers-Johnson, executive director, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 7 through 9 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: Horse Racing Commission: Licensing

810 KAR 003:020. Licensing of racing participants. Shan Dutta, deputy general counsel, and Marc Guilfoil, executive director, represented the commission.

In response to a question by Co-Chair West, Mr. Guilfoil stated that a stable agent was licensed to prepare administrative reports, such as a record of a horse's medications and treatment.

A motion was made and seconded to approve the following amendments: (1) to amend Section 6 to add provisions for military spouses in accordance with House Bill 91 from the 2022 Regular Session of the General Assembly; (2) to amend Section 15 to establish that licensure denial, suspension, or revocation based on a prior criminal conviction shall comply with the limitations in KRS Chapter 335B; and (3) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND

CONFORMITY paragraphs and Sections 2, 6, 11, 15, 19, and 20 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Flat and Steeplechase Racing

810 KAR 004:010. Horses.

810 KAR 004:030. Entries, subscriptions, and declarations.

810 KAR 004:060. Objections and complaints.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Health Services and Facilities

902 KAR 020:018. Operation and services; end-stage renal disease facilities. Kara Daniel, deputy inspector general, and Adam Mather, inspector general, represented the department.

In response to questions by Senator Alvarado, Mr. Mather stated that this administrative regulation did not require that a physician be present during dialysis. Ms. Daniel stated that a nurse was required to be present. The impetus for the changes was to establish provisions for dialysis at long-term care facilities and to align with federal changes. The federal requirement allowed a board eligible member to be a provider.

In response to a question by Co-Chair West, Mr. Mather stated that these provisions would make it easier to provide dialysis for those in long-term care facilities. Senator Alvarado stated that this policy would have been beneficial during the coronavirus (COVID-19) pandemic.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to delete an obsolete term; (2) to amend Section 3 to update standards for emergency coverage commensurate with federal changes; (3) to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1 and 3 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to add a Section 6 to incorporate material by reference. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Child Welfare

922 KAR 001:360. Private childcare placement, levels of care, and payment. Laura Begin, regulation coordinator; Stacy Carey, branch manager; and Misty Sammons, division director, represented the department.

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

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

Adult Services

922 KAR 005:070. Adult protective services.

In response to questions by Senator Alvarado, Ms. Begin stated that the definition for “mental injury” had been broadened in response to a request by Kentucky Protection and Advocacy. This definition provided a basis for further assessment and investigation. Ms. Carey stated that the definition for “mental injury” was used by intake and investigative staff in conjunction with the statutory definition for “abuse” to determine if further action was necessary. Senator Alvarado stated that there were concerns regarding false reports of mental injury.

The following administrative regulations were deferred or removed from the June 14, 2022, subcommittee agenda:

PERSONNEL CABINET: Classified

101 KAR 002:095E. Classified service general requirements.

General

101 KAR 006:020E. Kentucky Employees Charitable Campaign.

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.

Board of Embalmers and Funeral Directors

201 KAR 015:030E. Fees.

201 KAR 015:040E. Examination.

201 KAR 015:050E. Apprenticeship and supervision requirements.

201 KAR 015:110E. Funeral establishment criteria.

201 KAR 015:125E. Surface transportation permit.

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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Workforce Investment: 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.

Department of Workers' Claims

803 KAR 025:195E. Utilization review, appeal of utilization review decisions, and medical bill audit.

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.

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

Department for Public Health: Health Services and Facilities

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

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

Early Intervention System

902 KAR 030:120. Evaluation and eligibility.

Office of Inspector General

906 KAR 001:110. Critical access hospital services.

Department for Behavioral Health, Developmental and Intellectual Disabilities:
Institutional Care

908 KAR 003:010. Patient's rights.

Department for Community Based Services: Child Welfare

922 KAR 001:310. Standards for child-placing agencies.

922 KAR 001:315. Standards for child-placing agencies placing children who are not in the custody of the cabinet.

922 KAR 001:340. Standards for independent living programs.

The subcommittee adjourned at 1:30 p.m. The next meeting of this subcommittee is tentatively scheduled for July 14, 2022, at 1 p.m.