

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the August Meeting

August 9, 2022

Call to Order and Roll Call

The August meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, August 9, 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, Ralph Alvarado, and David Yates; Representatives Randy Bridges, Deanna Frazier Gordon, and Mary Lou Marzian.

Guests: Mary Elizabeth Bailey, Rosemary Holbrook, Personnel Cabinet; Travis Mayo, Bethany Atkins Rice, Brian Thomas, Department of Revenue; Carrie Bass, Jessica Beaubien, Kentucky Public Pensions Authority; Cordelia Harbut, Board of Architects; Eddie Slone, John Wood, Department of Emergency Medical Services; Sarah Cronan, B.R. Masters, Craig Potts, Tourism, Arts, and Heritage Cabinet; Todd Allen, Department of Education; Oran McFarlan, Office of Unemployment Insurance; Dale Hamblin, Jr., Scott Wilhoit, Department of Workers' Claims; Shan Dutta, Jamie Eads, Jennifer Wolsing, Kentucky Horse Racing Commission; Amber Ballinger, Angela Billings, Julie Brooks, Paula Goff, Krista Hamilton, Darrin Sevier, Department for Public Health; Fatima Ali, Veronica Judy-Cecil, Jonathan Scott, Department for Medicaid Services; Laura Begin, Holly Davis, Paula Saenz, Department for Community Based Services.

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

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Administrative Regulations Reviewed by this Subcommittee:

PERSONNEL CABINET: Classified

101 KAR 002:066. Certification and selection of eligible applicants for employment. Mary Bailey, commissioner, and Rosemary Holbrook, assistant general counsel, represented the cabinet.

In response to a question by Co-Chair West, Ms. Bailey stated that this package of administrative regulations did not relate directly to employee compensation.

101 KAR 002:102. Classified leave general requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3, 5, and 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

In response to questions by Co-Chair Hale, Ms. Holbrook stated that an employee who requested voting leave was required to file a voting verification form, which would then be available in the event of an audit. Leave would not be granted to an employee who did not vote. Each employee was required to request the voting leave in advance.

Unclassified

101 KAR 003:015. Leave requirements for unclassified service.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3, 5, and 9 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: Department of Revenue

103 KAR 043:340E. Excise taxes on gasoline and special fuels; average wholesale price of gasoline and annual survey value. Bethany Atkins – Rice, executive director, Legal Services; Travis Mayo, general counsel to Governor Beshear; and Brian Thomas, general counsel, Finance Cabinet, represented the department.

In response to questions by Co-Chair West, Mr. Mayo stated that this administrative regulation had bipartisan support, including support by Representative Jason Nemes. The General Assembly never intended to impose higher gas taxes at a time of soaring prices. This emergency administrative regulation provided relief from rising gas prices by freezing the gas tax rate at the rate from the past seven (7) years, in order to temporarily prevent automatic increases. Ms. Atkins – Rice stated that the rate was frozen at twenty-six (26) cents for regular automotive fuel and twenty-three (23) cents for diesel. The first increase would have been two (2) cents. Mr. Mayo stated that, prior to the filing of this emergency

administrative regulation, Transportation Cabinet Secretary, Jim Gray, stated that there would be no material impact to road projects, and impact to the road fund was estimated to be \$28.2 million July 1 through mid-January. This was approximately one and six-tenths (1.6) percent of the enacted road fund budget estimated for Fiscal Year 2023. Impact to the road fund was considered throughout the development of this emergency administrative regulation. The market remained volatile, and gas prices could still trend back upward as other prices currently were. While there was no anticipated impact from this emergency administrative regulation pertaining to rebuilding efforts related to the eastern Kentucky flooding, the Transportation Cabinet would be a better source for that information. Providing relief during a time of rising costs helped Kentuckians, and that was the purpose for this emergency administrative regulation. Unaware of the specific average savings per customer per gas-tank fill up, Mr. Mayo stated that his office would follow up to this subcommittee with data. Funding needs to repair bridges and other infrastructure damaged during the flooding in eastern Kentucky continued to be assessed. FEMA and other federal funding was expected to be used to repair at least a portion of the damage.

In response to questions by Senator Alvarado, Mr. Mayo stated that Senate Joint Resolution 99 from the 2022 Regular Session of the General Assembly, which gave the Governor authority related to motor vehicle taxes, prompted this emergency administrative regulation, which was similar in nature as pertains to promulgation authority. Senator Alvarado stated that the Governor's Office should have contacted the General Assembly for guidance regarding this issue. There did not seem to be statutory authority for this emergency administrative regulation, which seemed to represent a usurpation of power.

Co-Chair West stated that the General Assembly had intent when it passed gas tax calculation legislation. There was a significant question regarding statutory authority for this emergency administrative regulation. In response to questions by Co-Chair West, Mr. Mayo stated that he had not discussed with the Governor adding this issue to the call for the expected Special Session of the General Assembly. The current surplus might be used for some of the repairs from the flooding in eastern Kentucky.

In response to a question by Co-Chair Hale, Mr. Mayo stated that the Governor was committed to making local governments financially whole.

Kentucky Retirement Systems

105 KAR 001:450E. Quasi-governmental employer reports on independent contractors and leased employees. Carrie Bass, attorney, and Jessica Beaubien, policy specialist, represented the systems.

BOARDS AND COMMISSIONS: Board of Architects

201 KAR 019:035. Qualifications for examination and licensure. Cordelia Harbut, executive director, represented the board.

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

201 KAR 019:087. Continuing education.

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

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

202 KAR 007:560. Ground vehicle staff. Eddie Slone, interim executive director, and John Wood, counsel, represented the board.

In response to a question by Senator Alvarado, Mr. Slone stated that this administrative regulation decreased requirements for ambulance drivers.

In response to questions by Co-Chair West, Mr. Slone stated that there was insufficient staff, especially in rural areas, to meet the standards prior to this amendment. Kentucky did not have enough paramedics to meet the need. While reduced safety was a concern, this was an attempt to address the current situation that existed.

In response to questions by Senator Yates, Mr. Slone stated that he did not agree that Kentucky's standard of care was lower than other states. While it would be preferable to have a paramedic on every ambulance, there was insufficient staff. Senator Yates stated that public safety should be the highest priority. A request for additional funding would be preferable to a request to decrease standards. Co-Chair West agreed that public safety was important.

TOURISM, ARTS AND HERITAGE CABINET: Heritage Council

300 KAR 006:011E. Historic rehabilitation tax credit certifications. Sarah Cronan, general counsel; B. R. Masters, director of legislative services; and Craig Potts, executive director, represented the council.

EDUCATION AND LABOR CABINET: Board of Education: General Administration

702 KAR 001:140. Student records; hearing procedures. Todd Allen, general counsel, represented the board.

In response to questions by Co-Chair West, Mr. Allen stated that this administrative regulation was being clarified because there had been some confusion regarding the application of state and federal laws. If a student was under eighteen (18) years of age, usually the parent had access to student records. Hearings were held if there was a significant challenge to the records. Typically, the subject of the hearings was disciplinary records. The term, “certified”, was being removed because it had created confusion.

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.

Office of Unemployment Insurance

787 KAR 001:360. Overpayment waivers. Oran McFarlan, deputy general counsel, represented the office.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs 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 025:195E. Utilization review, appeal of utilization review decisions, and medical bill audit. Dale Hamblin, assistant general counsel, and Scott Wilhoit, commissioner, represented the department.

In response to questions by Co-Chair West, Mr. Hamblin stated that changes to this program included treatment guidelines, deadline changes, and peer-to-peer provisions. Mr. Wilhoit stated that changes consisted of cleanup and clarifications.

PUBLIC PROTECTION CABINET: Horse Racing Commission: Medication Guidelines

810 KAR 008:010. Medication; testing procedures; prohibited practices. Shan Dutta, deputy general counsel, and Jamie Eads, interim executive director, represented the commission.

In response to a question by Co-Chair West, Ms. Eads stated that the commission was responsible for collecting biological samples. This administrative regulation allowed the owner to test a portion of the sample at a lab of the owner's choice. Changes included a new timeline in the interest of transparency.

A motion was made and seconded to approve the following amendments: to amend Sections 16 and 25 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Hearings and Appeals

810 KAR 009:010. Hearings, reviews, and appeals.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4 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: Maternal and Child Health

902 KAR 004:030. Newborn screening program. Julie Brooks, regulation coordinator, represented the department.

In response to questions by Senator Alvarado, Ms. Brooks stated that the request for this change came from local health departments. This amendment removed a layer of approval, giving local health departments more authority in that the department would not first have to approve compensation requests.

In response to a question by Co-Chair West, Ms. Brooks stated that there was no cap on discretionary pay.

Local Health Departments

902 KAR 008:060. Salary adjustments for local health departments.

A motion was made and seconded to approve the following amendments: to amend Sections 5, 6, 9, and 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.

902 KAR 008:100. Disciplinary procedures applicable for local health department employees.

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

Sanitation

902 KAR 010:140. On-site sewage disposal system installer certification program standards.

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

Early Intervention System

902 KAR 030:120. Evaluation and eligibility.

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

Department for Medicaid Services: Outpatient Pharmacy Program

907 KAR 023:020E. Reimbursement for outpatient drugs. Jonathan Scott, regulation coordinator, represented the department.

In response to questions by Co-Chair West, Mr. Scott stated that this amendment revised the dispensing fee reimbursement frequency for qualifying medications in order to expedite the reimbursement process.

In response to a question by Senator Alvarado, Mr. Scott stated that reimbursement could be every seven (7) days for a qualifying medication.

Department for Community Based Services: Child Welfare

922 KAR 001:310. Standards for child-placing agencies. Laura Begin, regulation coordinator, represented the department.

In response to a question by Co-Chair Hale, Ms. Begin stated that this change was made for consistency with related administrative regulations.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1 through 8, 10 through 13, and 15 through 19 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 2 to clarify requirements to resume work for an employee under indictment, legally charged with felonious conduct, or subject to a cabinet investigation; and (3) to update material incorporated by reference to clarify information regarding medically complex homes. Without objection, and with agreement of the agency, the amendments were approved.

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

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, 5, 13, and 15 for clarity and to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

The following administrative regulations were deferred or removed from the August 9, 2022, subcommittee agenda:

STATE BOARD OF ELECTIONS: Statewide Voter Registration

031 KAR 003:031E. Voting precinct and address of overseas voter whose last place of residence is in the Commonwealth is no longer a recognized residential address.

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Forms and Procedures

031 KAR 004:071E. Recanvas procedures.

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031 KAR 004:131E. Delivery and return of absentee ballots transmitted to covered voters via facsimile or electronically.

031 KAR 004:131. Delivery and return of absentee ballots transmitted to covered voters via facsimile or electronically.

031 KAR 004:141E. Submission of the federal postcard application via electronic mail.

031 KAR 004:141. Submission of the federal postcard application via electronic mail.

031 KAR 004:170. Exceptions to prohibition on electioneering.

031 KAR 004:196E. Consolidation of precincts and precinct election officers.

031 KAR 004:196. Consolidation of precincts and precinct election officers.

031 KAR 004:201E. Chain of custody for records during an election contest.

031 KAR 004:201. Chain of custody for records during an election contest.

031 KAR 004:210E. Establishment of risk-limiting audit pilot program.

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Voting

031 KAR 005:011E. Use of the federal write-in absentee ballot.

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031 KAR 005:026E. Ballot standards and election security.

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FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems

105 KAR 001:450. Quasi-governmental employer reports on independent contractors and leased employees.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:015. Continuing education.

Board of Licensure for Long-Term Care Administrators

201 KAR 006:060. Fees.

Board of Dentistry

201 KAR 008:520. Fees and fines.

201 KAR 008:550. Anesthesia and sedation related to dentistry.

Real Estate Commission

201 KAR 011:121. Standards of professional conduct.

TOURISM, ARTS AND HERITAGE CABINET: Heritage Council

300 KAR 006:011. Historic rehabilitation tax credit certifications.

JUSTICE AND PUBLIC SAFETY CABINET: Department of State Police:
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 LABOR CABINET: Department of Workforce Investment:
Employment Services

787 KAR 002:040. Local workforce development area governance.

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

PUBLIC PROTECTION CABINET: Department of Insurance: Health Insurance Contracts

806 KAR 017:585. Annual report mental health parity nonquantitative treatment limitation compliance.

Department of Housing, Buildings and Construction: Kentucky Building Code

815 KAR 007:120. Kentucky Building Code.

Heating, Ventilation, and Air Conditioning Licensing Requirements

815 KAR 008:010. Licensing requirements for master HVAC contractors and journeyman HVAC mechanics.

Standards of Safety

815 KAR 010:060. Kentucky standards of safety.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Human Resource Management: Administration

900 KAR 001:050. Child and adult protection employees subject to state and national criminal background checks.

Department for Public Health: Communicable Diseases

902 KAR 002:020. Reportable disease surveillance.

902 KAR 008:120. Leave provisions applicable to employees of local health departments.

Department for Medicaid Services

907 KAR 001:082. Coverage provisions and requirements regarding rural health clinic services.

907 KAR 001:104. Reimbursement for advanced practice registered nurse services.

Department for Community Based Services: Child Welfare

922 KAR 001:290. Background checks for private child-caring or child-placing staff members.

The subcommittee adjourned at 2:10 p.m. The next meeting of this subcommittee was tentatively scheduled for, September 13, 2022, at 1 p.m.