

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the October Meeting

October 11, 2022

Call to Order and Roll Call

The October meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, October 11, 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: Cassie Trueblood, Education Professional Standards Board; Taylor Brown, State Board of Elections; Charles Jones, Charla Sands, Jeremy Slinker, Department of Military Affairs; Leanne Diakov, Board of Medical Licensure; Christopher Hunt, Board of Cosmetology; Kelly Jenkins, Jeffrey Prather, Board of Nursing; Eddie Sloan, John Wood, Board of Emergency Medical Services; Craig Potts, Sarah Cronin, Heritage Council; Rich Storm, Brian Clark, Dave Dreves, Department of Fish and Wildlife Resources; Bethany Fields, Clint Quarles, Department of Agriculture; Captain Bradley Arterburn, Brenn Combs, Department of Kentucky State Police; Amy Barker, Kentucky Law Enforcement Council; Abigail Gall, Shaun Orme, Department of Insurance; Doug Hardin, Ambrose Wilson, Department of Charitable Gaming; Kara Daniel, Adam Mather, Office of Inspector General; Julie Brooks, Wes Duke, Department for Public Health; Jonathan Scott, Department of Medicaid Services; Jennifer Wiseman, April Hester, Kentucky Association of Nurse Anesthetists; Jiapeng Huang, Katelyn Williams, Kentucky Society of Anesthesiologists; Joe Barnett, Maria Lewis, Child Support Enforcement; Laura Begin, Andrea Day, Department for Community Based Services.

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

Administrative Regulations Reviewed by this Subcommittee:

EDUCATION AND LABOR CABINET: Education Professional Standards Board:
Alternative Routes to Certification

016 KAR 009:100. Alternative route to certification institute. Cassie Trueblood, general counsel, represented the board.

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 through 9 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Section 5 to clarify that this is a reconsideration process, not a formal appeal; and (3) to amend Section 7 to clarify that an applicant with a terminal degree shall be exempt from the requirement of a passing score on the admission assessments. Without objection, and with agreement of the agency, the amendments were approved.

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. Taylor Brown, general counsel, represented the board.

In response to questions by Co-Chair West, Mr. Brown stated that this package of administrative regulations was in response to House Bill 564 from the 2022 Regular Session of the General Assembly and House Bill 574 from the 2021 Regular Session of the General Assembly, and included other necessary technical corrections.

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

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

Forms and Procedures

031 KAR 004:071E. Recanvas procedures.

031 KAR 004:071. Recanvas procedures.

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

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.

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

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. (Filed with Emergency) (Deferred from August)

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

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

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.

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

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

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify when the board may request resubmission of the petition; and (2) to amend the RELATES TO and STATUTORY AUTHORITY 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.

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.

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 and formatting requirements

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

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

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

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

Voting

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

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

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

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

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

A motion was made and seconded to approve the following amendments: (1) to amend Section 6 to use statutory terminology; (2) to amend Sections 6 through 11 to cross-reference relevant statutes and align with statutory requirements; and (3) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 3 through 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Department of Military Affairs: Disaster and Emergency Services

106 KAR 001:141. Emergency management funding. Charles Jones, executive director; Jeremy Slinker, division director; and Charla Sands, attorney, represented the department.

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.

106 KAR 001:171. Local emergency management agency program quarterly report.

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

106 KAR 001:181. Project application.

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

106 KAR 001:191. Project application reimbursement.

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

106 KAR 001:201. Local plan.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 3 to clarify that the plan draft and adopted local plan are due annually; and (3) to add Section 4 to incorporate material. Without objection, and with agreement of the agency, the amendments were approved.

106 KAR 001:211. Local emergency management training.

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 4 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.

106 KAR 001:221. Local exercise.

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

106 KAR 001:231. Local emergency management agency ordinance requirement.

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 Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

106 KAR 001:241. Local emergency management director appointment process.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 2, 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.

106 KAR 001:251. Workers' Compensation Enrollment Form.

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

106 KAR 001:261. Supplementary state fund expense reimbursement eligibility list.

A motion was made and seconded to approve the following amendments: to amend the TITLE, the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs, and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

106 KAR 001:291. Specialized rescue squad alternative affiliation agreement process.

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

106 KAR 001:341. Rescue aid fund allocation.

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

106 KAR 001:371. Rescue aid fund expenditure documentation.

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 requirements of KRS Chapter 13A; and (2) to delete Section 3 because the form is incorporated in another administrative regulation, which this administrative regulation cross references. Without objection, and with agreement of the agency, the amendments were approved.

Military Assistance Trust Funds

106 KAR 002:021. Military Family Assistance Trust Fund.

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

106 KAR 002:031. National Guard Adoption Benefits Program.

A motion was made and seconded to approve the following amendment: to amend Section 2 to correct the form title. Without objection, and with agreement of the agency, the amendment was approved.

BOARDS AND COMMISSIONS: Board of Medical Licensure

201 KAR 009:305. Continued licensure of athletic trainers. Leanne Diakov, general counsel, represented the board.

In response to a question by Co-Chair Hale, Ms. Diakov stated that this administrative regulation did not establish additional requirements. Previously, specific hours were required for HIV/AIDS training; however, the specificity was being deleted. Overall continuing education-hour requirements remained the same.

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.

Board of Cosmetology

201 KAR 012:030. Licensing and examinations. Christopher Hunt, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the TITLE and Sections 3 through 5, 7, 9, 11 through 16, and 21 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 012:060. Inspections.

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.

201 KAR 012:082. Education requirements and school administration.

A motion was made and seconded to approve the following amendments: to amend Sections 9, 19, 23, 33, and 34 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 012:190E. Complaint and disciplinary process.

201 KAR 012:190. Complaint and disciplinary process.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 3 and 6 to comply with the drafting

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

201 KAR 012:230. Code of ethics.

201 KAR 012:260. Fees.

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.

201 KAR 012:290. Permits.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, 5, 7, 8, and 10 through 14 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 Nursing

201 KAR 020:260. Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing. Kelly Jenkins, executive director, and Jeffrey Prather, general counsel, represented the board.

In response to questions by Co-Chair West, Ms. Jenkins stated that the board was working toward addressing Kentucky's nursing shortage. 400 new nursing program spots were created, establishing opportunities for approximately 15,000 new potential nurses in total.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to comply with Senate Bill 10 from the 2022 Regular Session of the General Assembly, KRS 314.111(5); and (2) to amend the RELATES TO paragraph and Sections 1 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 020:310. Faculty for prelicensure registered nurse and practical nurse programs.

201 KAR 020:490. Licensed practical nurse infusion therapy scope of practice.

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

201 KAR 020:620. Licensing requirements for licensed certified professional midwives.

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

201 KAR 020:650. Licensed certified professional midwives permitted medical tests and formulary.

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.

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

202 KAR 007:701. Scope of practice matters. Sam Lowe, deputy director, and John Wood, counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend supplemental procedures an EMT may perform to: (a) delete the reference to the use of end tidal CO₂ monitoring; and (b) add a reference to quantitative and qualitative capnography and capnometry; and (2) to amend Section 11 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: Heritage Council

300 KAR 006:011. Historic rehabilitation tax credit certifications. Sarah Cronin, general counsel, and Craig Potts, director, represented the council.

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

Department of Fish and Wildlife Resources: Fish

301 KAR 001:410. Taking of fish by nontraditional fishing methods. Brian Clark, deputy commissioner; Dave Dreves, fisheries director; and Rich Storm, commissioner, represented the department.

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

Game

301 KAR 002:142. Spring turkey hunting.

GENERAL GOVERNMENT CABINET: Department of Agriculture: Agricultural Pest Control

302 KAR 027:011. Repeal of 302 KAR 027:010, 302 KAR 027:020, 302 KAR 027:040, 302 KAR 027:050, and 302 KAR 027:060. Bethany Fields, intern, and Clint Quarles, counsel, represented the department.

Mr. Quarles introduced Ms. Fields, who was running for national office with Future Farmers of America.

Ornamental Turf Lawn and Interior Plantscape Pest Control

302 KAR 028:011. Repeal of 302 KAR 028:010, 302 KAR 028:020, 302 KAR 028:030, 302 KAR 028:040, 302 KAR 028:050, and 302 KAR 028:060.

Structural Pest Control

302 KAR 029:011. Repeal of 302 KAR 029:010, 302 KAR 029:020, 302 KAR 029:040, 302 KAR 029:050, 302 KAR 029:060 and 302 KAR 029:070.

JUSTICE AND PUBLIC SAFETY CABINET: Department of State Police: 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. Captain Bradley Arterburn, records branch, and Brenn Combs, staff attorney, represented the department.

In response to questions by Co-Chair West, Mr. Combs stated that these administrative regulations only pertained to peace officers and retired peace officers. A qualifying option was added.

A motion was made and seconded to approve the following amendments: (1) to amend Section 8 and the forms incorporated by reference to include additional statutory requirements; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 4, 6, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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.

A motion was made and seconded to approve the following amendments: (1) to amend Section 4 and the form incorporated by reference to include an additional statutory requirement; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 3 and 5 and the form incorporated by reference to include additional statutory requirements; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 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.

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.

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

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.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph; Sections 1 and 2; and the material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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.

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.

Kentucky Law Enforcement Council

503 KAR 001:140. Peace officer, telecommunicator, and court security officer professional standards. Amy Barker, assistant general counsel, represented the council.

A motion was made and seconded to approve the following amendments: to amend Sections 8 and 15 and the material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Insurance Holding Company Systems

806 KAR 037:010. Insurance holding company systems. Abigail Gall, executive advisor, and Shawn Orme, executive advisor, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1, 2, 5, 6, 11, and 13 through 18 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 11 to remove references to the fifteen (15) day amendment deadline; and (3) to amend Section 19 to revise incorporated material. Without objection, and with agreement of the agency, the amendments were approved.

Department of Charitable Gaming: Charitable Gaming

820 KAR 001:001. Definitions. Doug Hardin, staff attorney, and Ambrose Wilson, commissioner, represented the department.

In response to questions by Senator Yates, Mr. Hardin stated that the department was establishing a definition for “primary office location.” This definition did not prohibit an organization from having gaming devices at those types of locations, but those locations would have to be licensed charitable gaming facilities, rather than the charity’s primary office location. The department intended that the primary office location be where the charity did its charity business, not, for example, the back room of a bar. A charity would be allowed to collect money from a charitable gaming machine in a bar if the facility were somewhere else.

In response to questions by Co-Chair West, Mr. Hardin stated that the definition for “primary office location” was established to be used in conjunction with 820 KAR 1:032, Section 33, which listed the locations where a licensed charitable organization may install electronic pull-tab devices. One of those locations was the primary office location. Pull-tab machines may be installed at a bar, gas station, and similar, if that would not constitute the primary office location. That charitable establishment would have to have a charitable gaming facility license. Grey machines were not licensed or regulated by the department; therefore, this administrative regulation would not impact grey machines.

In response to questions by Senator Raque Adams, Mr. Hardin stated that the typical time for a complete, non-deficient application to be processed was sixty (60) days or less. Senator Raque Adams stated that there were entities in Louisville that had been waiting for six (6) months for a charitable gaming license.

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.

820 KAR 001:032. Pull tabs.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 5, 12, 16, 20, 21, 25, 27, 30, and 32 through 34 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 Inspector General: Telehealth

900 KAR 012:005E. Telehealth terminology and requirements. Kara Daniel, deputy inspector general, and Adam Mather, inspector general, represented the office.

Department for Public Health: Vital Statistics

901 KAR 005:120E. Abortion reporting. Julie Brooks, regulation coordinator, and Wes Duke, general counsel, represented the department.

In response to questions by Co-Chair Hale, Ms. Brooks stated that this administrative regulation implemented House Bill 3 from the 2022 Regular Session of the General Assembly and did not establish additional provisions.

Communicable Diseases

902 KAR 002:020. Reportable disease surveillance.

Programs for the Underserved

902 KAR 021:040. Community health worker certification.

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

Department for Medicaid Services

907 KAR 001:104. Reimbursement for advanced practice registered nurse services. Jonathan Scott, regulatory and legislative advisor, represented the department. April Hester, CRNA, and Dr. Jennifer Wiseman, president, represented the Kentucky Association of Nurse Anesthetists and appeared in support of this administrative regulation. Drs. Jiapeng Huang and Katelyn Williams, represented the Kentucky Society of Anesthesiologists, and appeared in opposition to this administrative regulation.

In response to questions by Co-Chair West, Mr. Scott stated that KRS 205.520(3) provided the statutory authority for this administrative regulation. The department also worked with the federal government in developing these reimbursement rates. This change amended a billing code modifier for anesthesia services in order to align Medicaid rates with Medicare rates. Previously, Certified Registered Nurse Anesthetists (CRNAs) received seventy-five (75) percent of the rate that a physician anesthesiologist would receive for anesthesia services. Removing the billing code modifier allowed CRNAs to be reimbursed at the same rate as physician anesthesiologists. Senator Alvarado stated that this change removed the billing code modifier so that CRNAs and physician anesthesiologists would receive equal reimbursement. Mr. Scott agreed with that statement.

In response to a question by Co-Chair Hale, Mr. Scott stated that removing the billing code modifier would allow CRNAs to be reimbursed at the same rate as physician anesthesiologists.

Representative Marzian stated that this administrative regulation was equalizing reimbursement rates for anesthesiologist services, rather than for providers. Kentucky was experiencing a shortage of physician anesthesiologists. Quality care was essential, and this was a good policy.

Senator Alvarado stated that he was in opposition to this policy. In response to questions by Senator Alvarado, Mr. Scott stated that Kentucky was experiencing a shortage of physician anesthesiologists, and there were healthcare deserts in both rural and urban areas. This administrative regulation did not differentiate provisions separately for rural and urban areas. This policy was not intended to attract or detract new physician anesthetists. Senator Alvarado stated that this would detract people from becoming physician anesthesiologist because the training was more costly and rigorous than to become CRNAs. Physician anesthesiologists were better suited to treat patients with complex cases. This modified reimbursement billing code should be targeted to only underserved areas.

In response to a question by Senator Yates, Mr. Scott stated that a physician anesthesiologist was authorized to supervise up to four (4) CRNAs. Senator Yates stated that Kentucky was experiencing a shortage of anesthesia providers. This subcommittee had made changes to other administrative regulations in order to compensate for shortages of other types of providers. It was important to ensure patient safety.

In response to a question by Senator Raque Adams, Mr. Scott stated that this matter pertained to a change to a reimbursement billing code modifier.

In response to a question by Co-Chair West, Dr. Wiseman stated that this administrative regulation had been in development for over eighteen (18) months. It became necessary for Kentucky to broaden reimbursement billing codes for anesthesia due to complications regarding patients who used services in neighboring states with a different coding system. All anesthesia stakeholders met to discuss the issue and determined that it would be advisable to align Medicaid reimbursement billing codes for anesthesiology to Medicare billing codes for the same services. This was not a pay equity issue. Additionally, this change was intended to prevent fraudulent billing. This reimbursement billing code was for anesthesia services that did not meet the seven (7) required medical direction criteria.

In response to questions by Senator Yates, Dr. Wiseman stated that, previous to this version of this administrative regulation, the reimbursement billing rate for services performed by a physician anesthesiologist was established at 100 percent of the physician fee schedule. A service provided by a CRNA was established at seventy-five (75) percent of the physician fee schedule. Ms. Hester stated that this administrative regulation allowed a facility to use whatever billing model was appropriate. Dr. Wiseman stated that there was

no scenario in which a CRNA could not perform the services. There were certain situations in which it was necessary to work as a team to perform services.

In response to a question by Senator Alvarado, Dr. Wiseman stated that this administrative regulation did not pertain to issues of medical training. The purpose was to align the reimbursement schedule with that of Medicare and private insurers. This would not disincentivize potential physicians from choosing anesthesiology. Senator Alvarado stated that he did not support this administrative regulation. Medicaid represented thirty-six (36) percent of billing; therefore, this would have a major impact and might result in fewer physician anesthesiologists in the long term.

In response to a question by Representative Marzian, Dr. Wiseman stated that, if anesthesia services did not meet the seven (7) required medical direction criteria and a CRNA was involved, the 100 percent reimbursement billing code could not previously be used. This complexity might have incentivized billing code fraud.

In response to a question by Co-Chair West, Dr. Williams stated that a physician anesthesiologist may supervise up to four (4) CRNAs and two (2) trainee physicians. There was a difference between a CRNA and a physician anesthesiologist. Many patients in Kentucky had comorbidities and needed a physician anesthesiologist. Reimbursing these professionals at the same compensation level implied that both were valued at the same rate. Ten (10) years after making changes, there was still a shortage of anesthesia providers, both CRNAs and physician anesthesiologists. Applicants for physician anesthesiologists were down. This policy change could further erode students choosing the field of physician anesthesiology.

In response to questions by Co-Chair West, Dr. Huang stated that the solution for improving healthcare in Kentucky was not increasing pay for CRNAs; the solution was increasing pay for all anesthesia care. There was a severe shortage of CRNAs and physician anesthesiologists in Kentucky. This change would discourage careers in Kentucky for physician anesthesiologists. Physician anesthesiologists provided some services that were not performed by CRNAs, such as diagnosis and treatment in certain situations. There could be serious negative anesthesia outcomes, even for simple surgeries on young, healthy patients. This policy would put Kentucky patients in danger. Dr. Williams stated that the reimbursement rates were federally established. Rates should be increased based on training and expertise.

In response to questions by Senator Yates, Dr. Williams stated that there were additional reimbursements for some diagnosis and treatment work provided by physician anesthesiologists. Some anesthesia-related diagnosis and treatment were not billed separately. Complex situations could arise suddenly; therefore, it sent the wrong message to compensate CRNAs and physician anesthesiologists equally. Dr. Huang stated that,

because complications could arise, it was necessary to reimburse physician anesthesiologists at a higher rate than CRNAs.

In response to a question by Senator Raque Adams, Dr. Huang stated that the Kentucky Society of Anesthesiologists was opposed to this administrative regulation. Dr. Williams stated that CRNAs and physician anesthesiologists provided two (2) different levels of service, and it was incorrect to bill at the same level. Senator Raque Adams stated that this was a reimbursement billing code issue, not a scope of practice issue.

Representative Marzian stated that this was a reimbursement billing code issue. Senator Alvarado stated that this markedly expanded reimbursement and disincentivized physician anesthesiologists. This was not the proper policy approach, and Kentucky would regret this decision in the future if this policy continues.

Co-Chair West stated that this matter would be discussed further once this administrative regulation was referred to the Interim Joint Committee on Health, Welfare, and Family Services.

Kentucky Children's Health Insurance Program

907 KAR 004:020E. Kentucky Children's Health Insurance Program Medicaid Expansion Title XXI of the Social Security Act.

907 KAR 004:030E. Kentucky Children's Health Insurance Program Phase III Title XXI of the Social Security Act.

Medicaid Eligibility

907 KAR 020:020E. Income standards for Medicaid other than Modified Adjusted Gross Income (MAGI) standards or for former foster care individuals.

907 KAR 020:100E. Modified Adjusted Gross Income (MAGI) Medicaid eligibility standards.

Department for Community Based Services: Child Support

921 KAR 001:400. Establishment, review, and modification of child support and medical support orders. Joe Barnett, branch manager, and Maria Lewis, assistant director, represented the department.

Daycare

922 KAR 002:160E. Child Care Assistance Program. Laura Begin, regulation coordinator, and Andrea Day, director, represented the department.

In response to questions by Co-Chair West, Ms. Begin stated that some increases had already gone into effect, and the department was continuously monitoring expenditures. The approximate cost for the increase in eligibility was \$1.7 million for a six (6) month period, which would extrapolate to approximately \$6 million to \$7 million per biennium. Federal funding would remain available until September 30, 2024, and advocates were asking Congress to invest more in child care. If Congress did not opt to invest more in child care and if the Kentucky General Assembly did not choose to continue this funding in the next biennium, the department would consider scaling back eligibility. These American Rescue Plan Act of 2021 (ARPA) funds were specifically earmarked for childcare purposes.

Senator Alvarado stated that Kentucky needed a long-term plan if these federal funds were exhausted. If federal funds were exhausted, cuts to this program might be seen as the responsibility of the General Assembly. The department should consider using some of its Medicaid advertising funds for this program instead. Kentucky was experiencing an all-time high in Medicaid sign-ups. Co-Chair West stated that he agreed with Senator Alvarado's comments.

In response to questions by Co-Chair West, Ms. Day stated that ARPA stabilization funds were based on a three (3) tier system. Tier I was base level, which indicated that health and safety requirements were being met. Tier II indicated that health and safety requirements were being met and employees were compensated at least ten (10) dollars per hour. Tier III indicated that health and safety requirements were being met and employees were compensated at least thirteen (13) dollars per hour. There was no distinction between nonprofit and for profit if guidelines were met and if the entities were regulated. The department was required to report how ARPA stabilization funds were used. This was accomplished through a monthly report by the provider. If the report was missed or late, funds could be reinstated upon future compliance. The report was easy to complete, and an email reminder and telephone reminder was sent by the third-party vendor.

A motion was made and seconded to approve the following amendments: (1) to update the DCC-300, "Kentucky Child Care Maximum Payment Rate Chart," to correct a typographical error relating to the value for Boyd County, certified providers for school-age, part day care to be "13" rather than "12"; and (2) to amend Section 20 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 002:160. Child Care Assistance Program.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify the definition for “child care”; (2) to amend Sections 1 and 3 to change the defined term from “qualified alien” to “qualified immigrant” for consistency with 921 KAR 2:006 and 2:016; (3) to amend Section 8 to: (a) clarify that a reference is to the Kentucky Works Program; (b) revise references to “Indian” to “Native American”; and (c) include the abbreviation for the Low Income Home Energy Assistance Program; (4) to amend Section 10 for clarity on the rates; (5) to update the DCC-300, “Kentucky Child Care Maximum Payment Rate Chart” to correct a typographical error, relating to the value for Boyd County, certified providers for school-age, part day care to be “13” instead of “12”; and (6) to amend Section 20 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 October 11, 2022, subcommittee agenda:

**EDUCATION AND LABOR CABINET: Education Professional Standards Board:
Alternative Routes to Certification**

016 KAR 009:110. Expedited route to certification. Cassie Trueblood, general counsel, represented the board.

In response to questions by Co-Chair West, Ms. Trueblood stated that this administrative regulation established the Option 9 alternative route to teacher certification. The board had received two (2) applications under Option 9 and had approved those in accordance with the emergency version of this administrative regulation. This program was authorized by House Bill 277 from the 2022 Regular Session of the General Assembly.

In response to questions by Co-Chair Hale, Ms. Trueblood stated that the board’s intention was to allow any district to partner with a college or university. Co-Chair Hale stated that the criteria might be difficult to meet for some regions, especially rural areas.

In response to questions by Representative Bridges, Ms. Trueblood stated that the field requirements in Section 3 of this administrative regulation were mandatory and were also established for teacher candidates in 16 KAR 5:040. The board had the statutory authority pursuant to KRS 161.028(1)(n) to waive regulatory requirements for extenuating circumstances, but had not received a waiver request for these type of field requirements. Representative Bridges stated that the criteria seemed difficult for rural districts to comply with.

In response to a question by Senator Yates, Ms. Trueblood stated that most regulatory requirement waiver requests pertained to incomplete clock hours or student-teaching days. The board had not received concerns regarding these field requirements.

In response to a question by Representative Frazier Gordon, Ms. Trueblood stated that compliance with field hours was tracked by the education preparation provider and the district.

Co-Chair West stated that the ultimate goal of this subcommittee was to consider if an administrative regulation implemented the authorizing statute as intended. If this administrative regulation were to be deferred, ideally the board would meet with stakeholders, consider feedback, and endeavor to reach an agreement. Deferral should not hamper efforts to hire new teachers because the emergency version of this administrative regulation was currently effective.

In response to a question by Representative Marzian, Ms. Trueblood stated that this administrative regulation was intended to help ameliorate Kentucky's teacher shortage.

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 10 to clarify various provisions and comply with the drafting and formatting 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. Trueblood stated that the board's intent was to establish an administrative regulation in accordance with the authorizing statute. Ms. Trueblood agreed to defer consideration of this administrative regulation to the November meeting of this subcommittee. Without objection, and with agreement of the agency, this administrative regulation was deferred.

FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems:
General Rules

105 KAR 001:415E. Reimbursement of hospital and medical insurance premiums for Medicare eligible retired members reemployed with a participating employer.

105 KAR 001:415. Reimbursement of hospital and medical insurance premiums for Medicare eligible retired members reemployed with a participating employer.

Kentucky Infrastructure Authority

200 KAR 017:111E. Guidelines for Kentucky Infrastructure Authority drinking water and wastewater grant program.

200 KAR 017:111. Guidelines for Kentucky Infrastructure Authority drinking water and wastewater grant program.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:380E. Board authorized protocols.

Board of Licensure for Long-Term Care Administrators

201 KAR 006:060. Fees.

Board of Dentistry

201 KAR 008:520. Fees and fines.

Real Estate Commission

201 KAR 011:121. Standards of professional conduct.

TRANSPORTATION CABINET: Department of Highways: Traffic

603 KAR 005:350. Off-highway vehicles, safety, and routes.

EDUCATION AND LABOR CABINET: Department of Education: Office of Instruction

704 KAR 003:305. Minimum requirements for high school graduation.

Department of Workplace Standards: Labor Standards; Wages and Hours

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

Department of Workers' Claims

803 KAR 025:089. Workers' Compensation medical fee schedule for physicians.

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.

Office of Health Data and Analytics: Kentucky Health Benefit Exchange

900 KAR 010:120. KHBE eligibility and enrollment in qualified health plan, SHOP, and SHOP formal resolution process.

Department for Public Health: Vital Statistics

901 KAR 005:120. Abortion reporting.

901 KAR 005:130. Certificate of abortion.

901 KAR 005:140. Permit to transport fetal remains.

Office of Inspector General: Health Services and Facilities

902 KAR 020:365. Kentucky abortion-inducing drug certification program and registration of qualified physicians.

Department for Medicaid Services: Medicaid Services

907 KAR 001:008. Ambulatory surgical center services and reimbursement.

907 KAR 001:065. Payments for price-based nursing facility services.

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

Department for Aging and Independent Living: Aging Services

910 KAR 001:090. Personal care attendant program and assistance services.

Department for Community Based Services: Child Welfare

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

922 KAR 001:300. Standards for child-caring facilities.

922 KAR 001:350. Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers.

Other Business: Co-Chair West clarified that the subcommittee's general rule mandating in-person attendance was not intended to be so prohibitive as to require someone who was out of state to travel to Kentucky. Virtual attendance would be allowed for unique situations, if approved by the subcommittee chair.

The subcommittee adjourned at 3:10 p.m. The next meeting of this subcommittee was tentatively scheduled for November 9, 2022, at 1 p.m.