

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the November Meeting

November 9, 2022

Call to Order and Roll Call

The November meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, November 9, 2022, at 1:00 PM, in Room 149 of the Capitol Annex. Representative David Hale, Chair, called the meeting to order, and the secretary called the roll.

Present were:

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

Guests: Cassie Trueblood, Education Professional Standards Board; Jessica Beaubien, Kentucky Public Pensions Authority; Stephen Curley, Board of Physical Therapy; Mona Juett, Department of Tourism; Amy Barker, Department of Criminal Justice Training; Melvin Bynes, Jon Johnson, Tony Youssefi, Office for Civil Rights and Small Business Development; Jon Johnson, Department of Highways; Todd Allen, Marty Park, Matt Ross, Department of Education; Lucretia Johnson, Oran McFarlan, Scott Wilhoit, Department of Workers' Claims; Abigail Gall, Department of Insurance; J.E.B. Pinney, Public Service Commission; Jonathan Scott, Office of Health Data and Analytics; Kara Daniel, Adam Mather, Office of Inspector General; Jonathan Scott, Department for Medicaid Services; Victoria Elridge, Marnie Mountjoy, Phyllis Sosa, Department for Aging and Independent Living; and Laura Begin, Amanda Bolton, and Todd Trapp, 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 009:110. Expedited route to certification. Cassie Trueblood, general counsel, 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 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.

A motion was made and seconded to approve the following amendments: to amend Section 3(1) to: require engagement with multiple student populations, including all of the listed populations represented in the student enrollment for the district where the candidate is completing the residency; and allow engagement opportunities to be offered outside of the district where the candidate is completing the residency. Without objection, and with agreement of the agency, the amendments were approved.

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. Jessica Beaubien, policy specialist, represented the systems.

A motion was made and seconded to approve the following amendments: to amend Section 1(7) to clarify the definition for “MEM.” Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4, 6, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; to amend Section 7 and incorporated Form 6260 to clarify who qualifies as a dependent child; and to amend Section 1(7) to clarify the definition for “MEM.” Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Physical Therapy

201 KAR 022:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants. Stephen Curley, executive director, represented the board.

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

TOURISM, ARTS AND HERITAGE CABINET: Department of Tourism

300 KAR 001:021E. Process for the distribution of tourism recovery and investment funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021. Mona Juett, deputy commissioner, represented the department.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Criminal Justice Training: General Training Provision

503 KAR 003:130E. Online basic and in-service training. Amy Barker, assistant general counsel, represented the department.

In response to a question by Representative Frazier Gordon, Ms. Barker stated that she did not have the exact number of individuals expected to complete online training, but she would follow up with that information.

TRANSPORTATION CABINET: Office for Civil Rights and Small Business Development: Office of Minority Affairs

600 KAR 004:010. Certification of disadvantaged business enterprises. Melvin Byne, executive director; Jon Johnson, assistant general counsel; and Tony Youssefi, staff assistant, represented the cabinet.

A motion was made and seconded to approve the following amendments: to amend Section 1 to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

Department of Highways: Traffic

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

In response to a question by Co-Chair West, Mr. Johnson stated that this administrative regulation was developed in response to 2021 legislation.

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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Education: School Terms, Attendance and Operation

702 KAR 007:125. Pupil attendance. Todd Allen, general counsel; Dr. Marty Park, chief digital officer; and Matt Ross, policy advisor, represented the department.

In response to questions by Co-Chair Hale, Mr. Allen stated that, previous to this version of this administrative regulation, there were agreements between school districts of attendance and districts of residence for students who attended out-of-district. These agreements were primarily for the purpose of SEEK fund calculations. Sometimes, disputes arose regarding these agreements, and this administrative regulation formerly established provisions to address those disputes. House Bill 563 from the 2020 Regular Session of the General Assembly eliminated the need for these agreements; therefore, because there was no longer a need for provisions to address agreement disputes, this administrative regulation was being amended to delete those provisions.

A motion was made and seconded to approve the following amendments: to amend Sections 12 and 16 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

704 KAR 003:535. Full-time enrolled online, virtual, and remote learning programs.

In response to questions by Co-Chair West, Mr. Allen stated that, for a minority of students, virtual learning was a better option. After a pilot study, the department developed a program for students who chose virtual learning. The program was voluntary, and no student would be required to opt for virtual learning. Dr. Park stated that districts requested a high-quality program for virtual learning for students who were better suited to this learning environment. Students were better suited to a virtual learning environment for various reasons, including health, social, emotional, and mental health reasons. A very small percentage of students had requested this virtual option.

In response to a question by Co-Chair Hale, Dr. Park stated that, while the department did not have exact numbers of participating students, it was probably less than two percent.

In response to a question by Representative Bridges, Dr. Park stated that this virtual program was not classified as alternative education, which had other specific requirements.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4, 7, and 8 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 of Special Instructional Services

705 KAR 004:041. Work-based learning program standards.

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

Department of Workers' Claims

803 KAR 025:089. Workers' Compensation medical fee schedule for physicians. Lucretia Johnson, deputy commissioner; Oran McFarlan, deputy general counsel; and Scott Wilhoit, commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 through 5 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: Health Insurance Contracts

806 KAR 017:531. Repeal of 806 KAR 17:350. Abigail Gall, executive advisor, represented the department.

ENERGY AND ENVIRONMENT CABINET: Public Service Commission: Utilities

807 KAR 005:001E. Rules of procedure. Jeb Pinney, executive advisor, represented the commission.

CABINET FOR HEALTH AND FAMILY SERVICES: 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. Jonathan Scott, regulatory and legislative advisor, represented the exchange.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 3, 6, 7, 9, 11, and 13 to comply with

the drafting and formatting requirements of KRS Chapter 13A; and to amend Section 5 to insert provisions concerning qualification for a Stand-Alone Dental Plan outside of the Qualified Health Plan enrollment period or a special enrollment period, as well as effective dates for those plans. Without objection, and with agreement of the agency, the amendments were approved.

Office of Inspector General: Telehealth

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

Department for Medicaid Services

907 KAR 001:008. Ambulatory surgical center services and reimbursement. Jonathan Scott, regulatory and legislative advisor, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 2 to: (a) clarify that bilateral procedures shall be reimbursed at 150 percent of the rate established by the administrative regulation instead of billed charges; (b) clarify that reimbursement for multiple endoscopy and multiple procedure discounting shall follow the Medicare rules as established by federal regulation and the federal processing manual; (c) clarify that reimbursement shall be limited to the lesser of billed charges or the amount established by the administrative regulation; (d) add federal cross references; and (e) include information on how to access the revised ASC fee schedule; to amend Section 3 to specify required forms; to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 3, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; and to add a new Section 7 to incorporate by reference the required forms. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Children's Health Insurance Program

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

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.

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

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

Medicaid Eligibility

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

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

Department for Aging and Independent Living: Aging Services

910 KAR 001:090. Personal care attendant program and assistance services. Victoria Elridge, commissioner; Marnie Mountjoy, division director; and Phyllis Sosa, regulation coordinator, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4, 6 through 14, and 16 to comply with the drafting and for-matting requirements of KRS Chapter 13A; and to amend Sections 2 and 12 to clarify that reassessments shall be biennially, rather than annually, to align with KRS 205.905. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Division of Family Support: Child Welfare

922 KAR 001:300. Standards for child-caring facilities. Laura Begin, regulation coordinator; Amanda Bolton, legislative and regulatory liaison; and Todd Trapp, division director, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 4 through 8 to comply with the drafting and formatting 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 November 9, 2022, subcommittee agenda:

STATE BOARD OF ELECTIONS: Electronic Voting Systems

031 KAR 002:030E. E-Poll book product certification.

PERSONNEL CABINET: Office of the Secretary

101 KAR 002:210E. 2023 Plan year handbook for the Public Employee Health Insurance Program.

FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems

105 KAR 1:451E. Quasi-governmental employer reports on independent contractors and leased employees.

KENTUCKY INFRASTRUCTURE AUTHORITY

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

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BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:380E. Board authorized protocols.

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201 KAR 002:450. Unprofessional conduct of a pharmacy permit holder.

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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Education: Office of Learning Programs Development

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

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: 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.

Office of Inspector General

906 KAR 001:210. Health care services agencies.

Department for Medicaid Services

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 Developmental Health, Developmental and Intellectual Disabilities: Substance Abuse

908 KAR 001:374. Licensure of nonhospital-based outpatient alcohol and other drug treatment entities.

Department for Community Based Services: K-TAP, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 002:006. Technical requirements for the Kentucky Transitional Assistance Program (KTAP). Laura Begin, regulation coordinator; Amanda Bolton,

legislative and regulatory liaison; and Todd Trapp, division director, represented the department.

In response to questions by Co-Chair Hale, Ms. Begin stated that this package of administrative regulations would both increase the number of individuals eligible and the amount each recipient may receive. This program was geared toward individuals transitioning between jobs. As an individual reached the established income threshold, that individual would no longer be eligible. Funding was federal. Recipient levels had consistently been decreasing, even during the coronavirus (COVID-19) pandemic. Recipient amounts had not been updated since the 1990s.

In response to questions by Representative Frazier Gordon, Ms. Begin stated that maintenance of effort costs for the program were approximately \$70 million. The department used relative caregiver payments to meet that maintenance of effort, and that amount was not expected to change as a result of this package of administrative regulations. Currently, there were approximately 10,000 participating families, consisting of approximately 3,000 adults and 17,000 children. Non-parental caregivers, such as grandparents caring for grandchildren, could be recipients. Mr. Trapp stated that able-bodied recipients in the benefit group were considered work eligible. Non-parental caregivers were not considered work eligible. The department would follow up with the number of individuals in the program who were work eligible. Representative Frazier Gordon stated that, while the program seemed important, she had concerns about the process of establishing policy through these administrative regulations.

In response to questions by Senator Alvarado, Mr. Begin stated that child support cooperation was a requirement for program eligibility. Individuals who were dealers in illegal substances were not eligible.

In response to questions by Co-Chair West, Mr. Trapp stated that recipients who had been deemed work eligible had a monthly activity requirement, such as education, training, or job seeking, which must be met to maintain eligibility. Recipients received, as necessary, transportation and supportive services, such as work attire. Information about the program was available on the department's website. Ms. Begin stated that community partners, community action groups, and case managers directed individuals toward the program as appropriate. Work grants were fully consumed, with any small remaining amounts rolled to the next year.

In response to questions by Representative Bridges, Ms. Begin stated that costs for maintenance of effort would not increase. The calculations for increasing recipient amounts varied based on each program. Mr. Trapp stated that work requirements applied to all work-eligible recipients. Representative Bridges stated that he had concerns. He wanted to ensure that these requirements did not conflict with House Bill 7 from the 2022 Regular Session of the General Assembly. These were substantial increases, regardless of if these were state

or federal funds. It seemed that the agency waited until the deadline to file administrative regulations set to expire, which created a transparency issue. These requirements seemed more appropriate for statutes. Ms. Begin stated that the department did not find a conflict with House Bill 7 from the 2022 Regular Session of the General Assembly. No public comments were received during the public comment process; however, the agency was open to further suggestions. The department believed that it had statutory authority for these administrative regulations. The timing of this administrative regulation coming before the subcommittee was related to KRS Chapter 13A process requirements. Representative Bridges stated that this was a good program, but he had ongoing concerns. Agencies should be more current with increases, rather than making such significant increases after thirty years.

In response to a question by Representative Frazier Gordon, Ms. Begin stated that these administrative regulations could go into effect in December or January, but that would be determined by the Co-Chairs of the Interim Joint Committee on Health, Welfare, and Family Services.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 3, 5, 13, 15, and 16 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 a question by Co-Chair Hale, Ms. Begin stated that the department would agree to defer 921 KAR 002:006, 002:016, 002:500, 002:510, and 002:520. Without objection, and with agreement of the agency, these administrative regulations were deferred to the December 2022 meeting of this subcommittee.

921 KAR 002:016. Standards of need and amount for the Kentucky Transitional Assistance Program (KTAP).

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, 3, 5, 8, and 12 to comply with the drafting requirements of KRS Chapter 13A; and to amend Section 2(1)(d)2.a. to reinsert that the age range for the eligible child shall be 16 through 18 years of age. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 002:500. Family Assistance Short Term (FAST).

921 KAR 002:510. Relocation Assistance Program (RAP).

921 KAR 002:520. Work Incentive (WIN).

Child Welfare

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

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

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