

# **ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**

## **Minutes of the December Meeting December 13, 2022**

### **Call to Order and Roll Call**

The December meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, December 13, 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; Senator Ralph Alvarado; Representatives Randy Bridges, Deanna Frazier Gordon, and Mary Lou Marzian.

Guests: Representative Derek Lewis; John Gregory, Dondra Meredith, Office of Adult Education; Chris Chamness, Department of Employment Insurance; Matt Stephens, Sandy Williams, Kentucky Infrastructure Authority; Cary Bishop, Brian Thomas, Finance and Administration Cabinet; Marc Kelly, Board of Social Work; Sarah Cronin, Mona Juett, Department of Tourism; Jenny Gilbert, Department of Fish and Wildlife Resources; Seth Fawns, Cyndi Heddleston, Kentucky State Corrections Commission; Amy Barker, Alicia Boyd, Janet Conover, Amelia Howell, Brandon Lynch, Department of Corrections; Amy Barker, Patrick Miller, Nathan Goen, Ben Wilcox, Department of Criminal Justice Training; Todd Allen, Matt Ross, Board of Education; Laura Begin, Office of Human Resource Management; Julie Brooks, Wes Duke, Department for Public Health; Kara Daniel, Adam Mather, Office of Inspector General; Jonathan Scott, Department of Medicaid Services; Laura Begin, Todd Trapp, Department for Community Based Services; Norma Hatfield, Kinship Families Coalition; and Dustin Pugel, Policy KY.

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

Administrative Regulations Reviewed by this Subcommittee:

EDUCATION AND LABOR CABINET: Office of Adult Education (KYAE):  
Adult Education and Literacy

013 KAR 003:050. GED® eligibility requirements. John Gregory, executive director, and Dondra Meredith, deputy general counsel, represented the office.

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.

PERSONNEL CABINET: Office of the Secretary

101 KAR 002:210E. 2023 Plan year handbook for the Public Employee Health Insurance Program. Chris Chamness, deputy commissioner, represented the office.

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

FINANCE AND ADMINISTRATION CABINET: KENTUCKY INFRASTRUCTURE AUTHORITY

200 KAR 017:111E. Guidelines for Kentucky Infrastructure Authority drinking water and wastewater grant program. Matt Stephens, general counsel, and Sandy Williams, executive director, represented the authority.

In response to questions by Co-Chair West, Ms. Williams stated that the fee was new. The authority was involved with 810 grants related to the federal American Rescue Plan Act. The fee was established at 0.5 percent of each grant amount and would be used to fund administrative costs through December 31, 2026. The authorizing statute allocated \$75,000 for administration of the grant program, and the authority was confident that there was sufficient statutory authority for the new fee.

In response to a question by Representative Bridges, Ms. Williams stated that the purpose of the fee was to fund staff salaries through December 31, 2026.

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

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

COMMONWEALTH OFFICE OF TECHNOLOGY

200 KAR 041:010. The Kentucky state plane coordinate system. Cary Bishop, assistant general counsel, and Brian Thomas, executive director, represented the office.

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

#### BOARDS AND COMMISSIONS: Board of Social Work

201 KAR 023:016E. Temporary permission to practice. Marc Kelly, executive director, represented the board.

In response to a question by Representative Frazier Gordon, Mr. Kelly stated that the board was involved with 47 temporary permits based on an administrative regulation that had expired. This administrative regulation was filed on an emergency basis to ensure continuity regarding those permits.

#### TOURISM, ARTS AND HERITAGE CABINET: Department of Tourism

300 KAR 001:021. 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. Sarah Cronin, general counsel, and Mona Juett, deputy commissioner, represented the department.

In response to questions by Co-Chair Hale, Ms. Juett stated that \$60 million for destination marketing was being dispersed in three tranches. Tranche 1 included \$25 million for direct marketing. Tranche 2 included \$25 million for the meetings and conventions industry, and Tranche 3 included \$10 million for multijurisdictional areas of five or more counties by group. The department had completed the process for tranches 1 and 2 and had scored the applications for tranche 3.

In response to a question by Co-Chair Hale, Ms. Juett stated that the department received \$15 million up front to administer the program.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 7 and 9 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 of Fish and Wildlife Resources: Game

301 KAR 002:185. Hunter education. Jenny Gilbert, legislative liaison, represented the department.

In response to a question by Co-Chair Hale, Ms. Gilbert stated that applicants were still required to attain live-fire training.

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

301 KAR 002:225. Dove, wood duck, teal, and other migratory game bird hunting.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, 7, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; and to add Section 10 to incorporate the Dove Quota Posthunt Hunter Survey by reference. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 002:251. Hunting and trapping seasons and limits for furbearers.

JUSTICE AND PUBLIC SAFETY CABINET: Kentucky State Corrections Commission: Kentucky Community Corrections Grant Program

500 KAR 010:001. Definitions for 500 KAR Chapter 010. Seth Fawns, staff attorney, and Cyndi Heddleston, staff assistant, represented the program.

500 KAR 010:020. Administration and application procedure for community corrections grant program.

500 KAR 010:030. Community Corrections Board and grant recipient requirements.

500 KAR 010:040. Program review.

A motion was made and seconded to approve the following amendments: to amend Section 2 to clarify record-retention requirements; and Sections 2 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.

Department of Corrections: Office of the Secretary

501 KAR 006:080. Department of Corrections manuals. Amy Barker, assistant general counsel, and Brandon Lynch, staff assistant, represented the department.

In response to a question by Co-Chair West, Ms. Barker stated that amendments reorganized requirements and, based on inmate requests, added faiths to the religion-related manual.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference for clarity and consistency and to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 006:130. Western Kentucky Correctional Complex.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to update cross references, make minor clarifications, and comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Criminal Justice Training: General Training Provision

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

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of State School Security Marshal

503 KAR 007:010. Onsite review of school security risk assessments and written approval of local board of education's noncompliance with KRS 158.4414(2). Nathan Goens, staff attorney, and Ben Wilcox, State School Security Marshal, represented the department.

In response to questions by Co-Chair West, Mr. Wilcox stated that this administrative regulation did not conflict with the Safety and Resiliency Act. If school funding was insufficient or staff unavailable to meet requirements for a School Resource Officer (SRO), the office would send a statement acknowledging the situation. At least one SRO was required per school.

In response to questions by Co-Chair Hale, Mr. Wilcox stated that SRO authority in off-campus situations depended on the employer of the SRO and from where the SRO derived authority. A facility such as a school board office would be under the jurisdiction of an SRO because the facility would constitute school property.

A motion was made and seconded to approve the following amendments: to amend: Section 3 to clarify procedures for on-site review of the School Security Risk Assessment Tool; Section 4 to clarify procedures for closed and locked-door exemption applications; and the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1, 3, 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.

EDUCATION AND LABOR CABINET: Board of Education: Charter Schools

701 KAR 008:010E. Charter school student application, lottery, and enrollment. Todd Allen, general counsel, and Matt Ross, executive advisor, represented the board.

In response to questions by Co-Chair West, Mr. Allen stated that four of the five administrative regulations in this package were amendments and one was new. Some changes related to a charter school pilot project and some related to revisions in the authorizing statutes.

701 KAR 008:020E. Evaluation of charter school authorizers.

701 KAR 008:030E. Charter school appeal process.

701 KAR 008:040E. Conversion charter school petition, conversation, and operation.

701 KAR 008:050E. Charter school funding.

Office of Learning Programs Development

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

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; and to amend Section 5 to add early graduation requirements in accordance with KRS 158.141. Without objection, and with agreement of the agency, the amendments were approved.

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. Laura Begin, regulation coordinator, represented the office.

In response to questions by Co-Chair West, Ms. Begin stated that the fingerprint-based national background check process for the Department of Community Based Services (DCBS) staff and for private child care and child placing employees was an automated system, and results should be completed quickly in most cases. Kentucky had multiple sites for fingerprint background testing. Federal law required these checks for private child care staff with access to vulnerable children; however, the FBI would only authorize the tests in the presence of a Kentucky statutory mandate. Senator Alvarado previously sponsored a bill to establish that statutory authority. Because DCBS staff had the same access as private agency staff, it seemed prudent to have consistent requirements for both. The typical time frame for the background check was three days unless a disqualifying issue resulted from the check. A disqualifying issue would result in a manual check, which would take longer. The office had a Help Center to address delays in this process.

#### Department for Public Health: Vital Statistics

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

In response to questions by Co-Chair West, Ms. Brooks stated that the abortion reporting form was being amended to include all statutorily required elements. 901 KAR 005:130 established processes related to certificates of abortion, and 901 KAR 005:140 established the process for a permit to transport fetal remains. The certificates of abortion were to be separate from certificates of live births and would be permanently stored in the Office of Vital Statistics.

A motion was made and seconded to approve the following amendments: to amend: Section 5 and Form VS-913, Report of Abortion, to add additional data elements required by House Bill 3 from the 2022 Regular Session of the General Assembly; and the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 through 5 to: (a) use statutory terminology; and (b) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

901 KAR 005:130. Certificate of abortion.

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

#### Local Health Departments

902 KAR 008:160. Local health department operations requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 4, 5, 10, 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.

Office of Inspector General: Health Services and Facilities

902 KAR 020:365. Kentucky abortion inducing drug certification program and registration of qualified physicians. Kara Daniel, assistant inspector general, and Adam Mather, inspector general, represented the office.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 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 Inspector General

906 KAR 001:210. Health care services agencies.

A motion was made and seconded to approve the following amendments: to amend Sections 3 through 5, 7, and 8 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 001:065. Payments for price-based nursing facility services. Jonathan Scott, regulatory and legislative advisor, represented the department.

In response to a question by Co-Chair West, Mr. Scott stated that this administrative regulation was making the \$29 reimbursement a permanent part of the base rate. Senator Alvarado stated that this rate increase was necessary to prevent facilities from closing.

Payments and Services

907 KAR 003:160E. Specialized children's services clinics.

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

921 KAR 002:016. Standards of need and amount for the Kentucky Transitional Assistance Program (KTAP). Laura Begin, regulation coordinator, and Todd Trapp,



Director of the Division of Family Support, represented the department. Norma Hatfield, president, Kinship Families, and Dustin Pugel, policy director, Kentucky Center for Economic Policy, appeared in support of this administrative regulation.

In response to a question by Co-Chair West, Ms. Begin stated that the amendments to 922 KAR 001:290 were intended to expedite the process for fingerprint based national background checks for private child care and child placement staff.

In response to questions by Co-Chair West, Ms. Begin stated that funding for 921 KAR 002:016 was federal. The department had not completed a fiscal analysis of the impact of changes to this program. Mr. Trapp stated that benefits were based on specific dollar amounts contingent upon factors such as income and the number of children involved. Most programs based benefits on a percentage, rather than a specific dollar amount. Mr. Pugel stated that this was unusual and problematic. There was no maintenance effect from this program; therefore, there would be no impact on the General Fund.

In response to a question by Co-Chair West, Mr. Pugel stated that Kentucky Center for Economic Policy supported this administrative regulation. This update brought Kentucky in line with median and surrounding states. There had not been an increase since 1995. There had been a decrease in families using this program.

In response to a question by Co-Chair West, Ms. Hatfield stated that Kinship Families supported this administrative regulation. Ms. Hatfield read two letters from families who were impacted by this program. The letters expressed support for increases to this program. Kentucky had the highest rate in the nation for kinship families, which constituted children living with family members who were not biological parents and children. Kinship families kept children out of the foster care system at a time when it was difficult to place children. Kinship families needed monetary support. The current level of support was significantly insufficient.

Representative Marzian stated that this administrative regulation should move on to the second legislative committee. This was an important administrative regulation with minimal financial impacts to Kentucky.

Co-Chair Hale stated that it was not his intent to stop this administrative regulation; however, the subcommittee members needed more time to consider the ramifications of this administrative regulation. Ms. Begin stated that the department was willing to meet with members before consideration by the second legislative committee, and the department preferred for this administrative regulation to move forward. In response to a question by Co-Chair Hale, Ms. Begin stated that the department respectfully did not agree to defer consideration of this administrative regulation to the January 2023 subcommittee meeting. Co-Chair West requested that the department provide to this subcommittee, financial information regarding this program.

921 KAR 002:017. Kentucky Works Program (KWP) supportive services.

921 KAR 002:035. Right to apply and reapply.

921 KAR 002:040. Procedures for determining initial and continuing eligibility.

921 KAR 002:050. Time and manner of payments.

921 KAR 002:060. Delegation of power for oaths and affirmations.

A motion was made and seconded to approve the following amendments: to amend Section 4 and the material incorporated by reference to: add the signed payee's title; add the notary's ID number; update the revision date; and make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 002:370. Technical requirements for Kentucky Works Program (KWP).

#### Child Welfare

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

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

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

A motion was made and seconded to approve the following amendment: to amend Section 20 to add provisions pertaining to maintenance of foster care home records. Without objection, and with agreement of the agency, the amendment was approved.

Other Business: A legislative citation was presented in honor of the retirement of Representative Marzian from the Kentucky General Assembly. Representative Marzian stated that she had enjoyed her tenure on this subcommittee and had learned a lot.

Senator Alvarado, who was also leaving the Kentucky General Assembly, stated that it was an honor to serve on this subcommittee, which was a place where the checks and balances of government were regularly exercised. He was looking forward to new challenges.

Co-Chair Hale, who was leaving his post as Co-Chair, stated that he enjoyed his time as Co-Chair of the subcommittee and had also learned a lot. He enjoyed working with his Co-Chair, Senator West, and with staff. He introduced Representative Derek Lewis, who was anticipated to become the next Co-Chair.

The following administrative regulations were deferred or removed from the December 13, 2022, subcommittee agenda:

STATE BOARD OF ELECTIONS: Electronic Voting Systems

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

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FINANCE AND ADMINISTRATION CABINET: Teachers' Retirement System:  
General Rules

102 KAR 001:361E. Disability retirement for TRS 4 members with less than five (5) years of service.

Kentucky Retirement Systems: General Rules

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

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BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:030. License transfer and non-resident pharmacist license.

201 KAR 002:360. Naloxone dispensing.

201 KAR 002:380E. Board authorized protocols.

201 KAR 002:380. Board authorized protocols.

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

201 KAR 002:460. Out of state pharmacy permits.

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 008:601. Mobile dental facilities and portable dental units.

Real Estate Commission

201 KAR 011:121. Standards of professional conduct.

Department of Fish and Wildlife Resources: Game

301 KAR 002:075. Wildlife rehabilitation permit.

301 KAR 002:081. Transportation and holding of live native wildlife.

301 KAR 002:082. Transportation and holding of live exotic wildlife.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 006:050. Luther Lockett Correctional Complex.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services

907 KAR 001:082. Coverage provisions and requirements regarding rural health clinic services. Jonathan Scott, regulatory and legislative advisor, represented the department.

In response to a question by Co-Chair West, Mr. Scott requested that this administrative regulation be deferred to the January 2023 meeting of this subcommittee. Without objection, and with agreement of the agency, this administrative regulation was deferred.

907 KAR 001:680. Vaccines for children program.

Payments and Services

907 KAR 003:010. Reimbursement for physicians' 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).

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

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

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

The subcommittee adjourned at 2:30 p.m. The next meeting of this subcommittee was tentatively scheduled for January 10, 2023, at 1 p.m.