

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the March Meeting

March 7, 2023

Call to Order and Roll Call

The March meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, March 7, 2023, at 8:00 AM, 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 Derek Lewis, Co-Chair; Senators Julie Raque Adams, and Damon Thayer; Representatives Randy Bridges, Deanna Frazier Gordon, and Daniel Grossberg.

Guests: Mark Bowman, Dwayne Edwards, Tamara Reid-McIntosh, and Juan Renaud, Department of Veterans' Affairs; Graham Gray and Farrah Petter, Auditor of Public Accounts; Carrie Bass and Jessica Beaubien, Kentucky Retirement Systems; Eden Davis and Christopher Harlow, Board of Pharmacy; Cory Meadows, Kentucky Medical Association; Ben Mudd, Kentucky Pharmacists Association; John Park and Michelle Shane, Board of Veterinary Examiners; Stephen Curley, Board of Physical Therapy; Marc Kelly, Board of Social Work; Eddie Sloan and John Wood, Board of Emergency Medical Services; Brian Clark, Steven Fields, and Jenny Gilbert, Department of Fish & Wildlife Resources; Amy Barker, Amelia Howell, and Brandon Lynch, Department of Corrections; Todd Allen, Matthew Courtney, Micki Ray, and Matt Ross, Department of Education; Oran McFarlan and Matt Lynch, Office of Unemployment Insurance; Abigail Gall and Shaun Orme, Department of Insurance; Julie Brooks, Department for Public Health; Kara Daniel and Adam Mather, Office of Inspector General; Alex Kuhn, American Heart Association; Lisa Lee and Johnathan Scott, Department for Medicaid Services.

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

The subcommittee determined that the following emergency administrative regulation was deficient pursuant to KRS 13A.030(2)(a):

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:380E. Board authorized protocols. Eden Davis, general counsel, and Christopher Harlow, executive director, represented the board. Ben Mudd, executive director, Kentucky Pharmacists Association, appeared in support of this administrative

regulation. Cory Meadows, director of advocacy, Kentucky Medical Association, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair West, Mr. Harlow stated that the board had been working with Kentucky Medical Association stakeholders to reach an agreement on this administrative regulation.

In response to a question by Co-Chair West, Mr. Mudd stated that the Kentucky Pharmacists Association supported board-authorized protocols and had also been working with the Board of Pharmacy regarding this administrative regulation. Pharmacists were well educated and qualified to provide protocol-driven care. Pharmacists were trained how to assess patients and under what circumstances it was appropriate to refer a patient to a primary care physician or to an emergency department. The intent of the board-authorized protocols was to provide safe and efficient care to the appropriate patients. Each protocol included exclusion and inclusion criteria in order to determine which patients were appropriate for pharmacy treatment and which patients should be referred for care from other types of providers. To date, the board had not reported any complaints pertaining to safety related to care by a pharmacist. These protocols were collaborative and required to be signed by a licensed prescriber.

In response to a question by Co-Chair West, Mr. Meadows stated that Kentucky Medical Association (KMA) had been working with the Board of Pharmacy to address concerns about board-authorized protocols. KMA previously expressed concerns regarding the removal of training and education provisions, as well as significant concerns regarding removing the list of conditions applicable to protocols. KMA preferred that the protocols be established statutorily in order to prevent future process concerns. KMA considered some of the conditions applicable for protocols inappropriate for treatment at the pharmacy counter, and physicians should have input in the protocols and the protocol process.

In response to a question by Co-Chair Lewis, Mr. Harlow stated that pharmacists were federally authorized to prescribe Paxlovid. The Department for Medicaid Services (DMS) contacted the board to request amendments to facilitate that process. It had been prohibited for a pharmacist to both prescribe and dispense the prescription; therefore, DMS requested an amendment to establish a protocol pertaining to Paxlovid. The emergent nature of the situation established the necessity for an emergency administrative regulation; however, the board determined to only establish the Paxlovid-related protocol and not others until the ordinary administrative regulation became effective.

In response to questions by Co-Chair West, Mr. Meadows stated that KMA had immediate concerns about this emergency administrative regulation and more comprehensive concerns about the overall protocol process. In the short term, the goal was to reinstate the education and training components and limit new protocols to Paxlovid only. The registry and protocol committee should be retained. In the long term, these

protocols should not be established through administrative regulation and, instead, should be statutorily established. Stakeholder meetings about this matter had resulted in some progress toward agreement on some specific matters.

In response to a question by Senator Raque Adams, Mr. Meadows stated that this emergency administrative regulation did not have conditions established for the protocols and did not have education or training provisions.

Co-Chair West made a motion, seconded by Senator Raque Adams, to find this emergency administrative regulation deficient. A roll call vote was conducted and, with six votes for deficiency and one vote against deficiency, this emergency administrative regulation was found deficient.

In response to a question by Ms. Davis, Co-Chair West stated that this subcommittee found this emergency administrative regulation deficient pursuant to KRS 13.030(2)(a)1., 6., 8., and 11.

Compiler's Note: Pursuant to KRS 13A.335(3)(a), a new Section 4 was added to this administrative regulation to reflect the finding of deficiency.

Administrative Regulations Reviewed by this Subcommittee:

OFFICE OF THE GOVERNOR: Department of Veterans Affairs: State Veteran's Nursing Home

017 KAR 003:020. Charges for room and board, goods, and services at state veterans' nursing homes. Mark Bowman, executive director; Tamara Reid-McIntosh, executive director; and Juan Renaud, deputy commissioner, 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 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.

GENERAL GOVERNMENT CABINET: Auditor of Public Accounts: Audits

045 KAR 001:030. Audits of sheriffs' tax settlements. Graham Gray, general counsel, and Farrah Petter, assistant state auditor, represented the auditor.

FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems: General Rules

105 KAR 001:001. Definitions for Title 105 of the Kentucky Administrative Regulations. Carrie Bass, staff attorney supervisor, and Jessica Beaubien, policy specialist, represented the systems.

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 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.

105 KAR 001:365. Hybrid cash balance plan.

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 11 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 Veterinary Examiners

201 KAR 016:550. Authorization for animal control agencies to apply for restricted controlled substances certificate from DEA. Dr. John Park, veterinarian and board member, and Michelle Shane, 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 requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 016:552. Responsibilities for certified animal control agencies; limitations on drugs.

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, 2, 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.

201 KAR 016:560. Certification as an animal euthanasia specialist.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs, Section 9, and 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.

201 KAR 016:562. Duties and responsibilities of an animal euthanasia specialist.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and 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 016:572. Certificate renewal for animal control agencies and animal euthanasia specialists; renewal notice.

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

201 KAR 016:610. Procedures for grievances, investigations, and administrative charges.

Board of Physical Therapy

201 KAR 022:170. Physical Therapy Compact Commission. Stephen Curley, executive director, represented the board.

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.

Board of Social Work

201 KAR 023:051. Renewal, termination, reinstatement of license. Marc Kelly, executive director, represented the board.

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 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.

Board of Emergency Medical Services

202 KAR 007:201. Emergency medical responders. Eddie Sloan, interim executive director, and John Wood, counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 2, 5, 6, 8, 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.

202 KAR 007:301. Emergency medical technician.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 2, 4, 6, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 007:330. Advanced emergency medical technician.

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, 2, 4, 5, 10, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 007:401. Paramedics.

202 KAR 007:555. Ground agencies.

202 KAR 007:601. Training, education, and continuing education.

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

301 KAR 002:245. Wanton waste and disposal of big game and upland game birds. Steven Fields, staff attorney, and Brian Clark, deputy commissioner, represented the department.

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

Hunting and Fishing

301 KAR 003:120. Commercial nuisance wildlife control.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 2 through 4, 6, 8, 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.

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

501 KAR 006:040. Kentucky State Penitentiary. Amy Barker, assistant general counsel, and Brandon Lynch, branch manager, represented the office.

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

EDUCATION AND LABOR CABINET: Department of Education: Charter Schools

701 KAR 008:010. Charter school student application, lottery, and enrollment. Todd Allen, general counsel; Matthew Courtney, policy advisor; Micki Ray, chief academic officer; and Matt Ross, policy advisor, represented the department.

In response to a question by Co-Chair West, Mr. Allen stated that 701 KAR 008:010, 008:020, 008:030, 008:040, and 008:050 were in response to House Bill 9 from the 2022 Regular Session of the General Assembly.

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

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

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

701 KAR 008:030. Charter school appeal process.

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

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.

701 KAR 008:050. Charter school funding.

Office of Instruction

704 KAR 003:303. Required academic standards.

Academic Standards

704 KAR 008:120. Required Kentucky academic standards for science.

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.

Exceptional and Handicapped Programs

707 KAR 001:002. Definitions.

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.

Office of Unemployment Insurance: Unemployment Insurance

787 KAR 001:090E. Unemployed worker's reporting requirements. Matt Lynch, staff attorney, and Oran McFarlan, deputy general counsel, represented the office.

787 KAR 001:100E. Week of unemployment defined.

PUBLIC PROTECTION CABINET: Department of Insurance: Authorization of Insurers and General Requirements

806 KAR 003:250. Cybersecurity reporting procedures. Abigail Gall, executive director, and Shaun Orme, executive advisor, 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 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

902 KAR 020:470. Kentucky heart attack response and treatment recognition process. Julie Brooks, regulation coordinator, represented the department.

Office of Inspector General

902 KAR 020:490E. Rural emergency hospitals. Kara Daniel, deputy inspector general, and Adam Mather, inspector general, represented the office.

Department for Medicaid Services

907 KAR 001:038E. Hearing Program coverage provisions and requirements. Lisa Lee, commissioner, and Jonathan Scott, regulation coordinator, represented the department.

Co-Chair Lewis stated that, for clarity, nothing seemed to prohibit the cabinet from negotiating new reimbursement rates. Ms. Lee stated that, regarding dental reimbursement rates, negotiated reimbursement rate increases were based on an expected increase in services. Reimbursement rates were targeted to services that would most benefit recipients and prevent disease progression. The cabinet was considering the options for moving forward after this administrative regulation and the other companion administrative regulations in this package were found deficient.

In response to questions by Representative Frazier Gordon, Ms. Lee stated that this administrative regulation pertained to hearing tests and hearing technology. The economic data provided in the department's analysis was based only on state contributions, which were approximately 25 percent of total costs. Federal contributions were approximately 75 percent of total costs. Mr. Scott stated that funding was complex, including federal and state funding, negotiated reimbursement rates, and capitation. Ms. Lee stated that the department was acting strategically to develop rates that were intended to have the biggest positive impact for recipients, rather than raising reimbursement rates across the board.

In response to questions by Co-Chair West, Ms. Lee stated that reimbursement rates were related to administrative regulations but were not directly adjusted through the administrative regulation process. Recent rate increases were negotiated based on the

expectation of expanded services. These administrative regulations were intended to assist employment opportunities and to prevent progression of disease, thus creating long-term cost savings. Mr. Scott stated that, if these administrative regulations became null, void, and unenforceable, there were services that would no longer be covered; therefore, those reimbursement rates would essentially be moot.

Co-Chair West stated that there did not seem to be impediments to the department filing replacement emergency administrative regulations to address this subject if these administrative regulations became null, void, and unenforceable. Legislators were available to further discuss this matter, if the department so chose.

Pursuant to KRS 13A.030(2)(a), this administrative regulation was found deficient at the February 14, 2023 meeting of this subcommittee.

The following administrative regulations were deferred or removed from the March 7, 2023, subcommittee agenda:

DEPARTMENT OF LAW: Kentucky Opioid Abatement Advisory Commission

040 KAR 009:010E. General application procedure.

040 KAR 009:020E. Local government application procedure.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:380. Board authorized protocols.

Board of Optometric Examiners

201 KAR 005:002. Board administration and optometric practice.

Board of Licensure for Long-Term Care Administrators

201 KAR 006:060. Fees.

Board of Social Work

201 KAR 023:016. Temporary permission to practice.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Juvenile Justice:
Child Welfare

505 KAR 001:120E. Department of Juvenile Justice Policies and Procedures Manual; Health and Safety Services.

505 KAR 001:140E. Department of Juvenile Justice Policies and Procedures Manual: Detention Services.

EDUCATION AND LABOR CABINET: Department of Education: Academic Standards

704 KAR 008:060. Required academic standards for social studies.

Department of Workplace Standards: Labor Standards; Wages and Hours

803 KAR 001:006. Employer-employee relationship.

PUBLIC PROTECTION CABINET: Department of Financial Institutions: General Provisions

808 KAR 001:170. Licensing and registration.

CABINET FOR HEALTH AND FAMILY SERVICES: Health Services and Facilities

902 KAR 020:480. Assisted living communities.

Controlled Substances

902 KAR 055:110. Monitoring system for prescription controlled substances.

Department for Medicaid Services

907 KAR 001:026E. Dental services' coverage provisions and requirements.

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

907 KAR 001:632E. Vision program coverage provisions and requirements.

The subcommittee adjourned at 9 a.m. The next meeting of this subcommittee was tentatively scheduled for April 11, 2023, at 1 p.m.