

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the April Meeting

April 11, 2023

Call to Order and Roll Call

The April meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, April 11, 2023, at 1:00 PM, in Room 149 of the Capitol Annex. Representative Derek Lewis, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Derek Lewis, Co-Chair; Senator Damon Thayer; Representatives Randy Bridges, Deanna Frazier Gordon, and Daniel Grossberg.

Guests: Joe Donohue, Board of Accountancy; Eden Davis and Christopher Harlow, Board of Pharmacy; Dr. Joe Ellis and Carson Kerr, Board of Optometric Examiners; Kelly Jenkins and Jeffrey R. Prather, Board of Nursing; Brian Clark, Steven Fields, and Jenny Gilbert, Department of Fish and Wildlife Resources; Amy Barker and Leah Boggs, Department of Juvenile Justice; Buddy Hoskinson, Matt Lynch, and Oran McFarlan, Office of Unemployment Insurance; Abigail Gall and Shaun Orme, Department of Insurance; Justin Burse, Marni Gibson, Chad Harlan, Jeff Jacob, and Gary Stephens, Department of Financial Institutions; Doug Hardin and Kim Sutherland, Department of Charitable Gaming; Kara Daniel and Adam Mather, Office of Inspector General; and Jonathan Scott, Department for Medicaid Services.

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

Administrative Regulations Reviewed by this Subcommittee:

BOARDS AND COMMISSIONS: Kentucky State Board of Accountancy

201 KAR 001:190. Examination sections, applications, and procedures. Joe Donohue, executive director, represented the board.

Co-Chair Lewis stated his appreciation for the board's work.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 9 through 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Pharmacy

201 KAR 002:380. Board authorized protocols. Eden Davis, general counsel, and Christopher Harlow, executive director, represented the board.

Co-Chair Lewis stated that he appreciated the board's willingness to revise this administrative regulation in response to stakeholders' concerns.

At the February 14, 2023, meeting of this subcommittee, a motion was made and seconded to approve the following amendments: to amend Section 1 to add a definition for "protocol"; and to amend 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.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph to add a statutory citation; to amend Section 2 to reference the authorized conditions listed in Section 5; to amend Section 3 to restore previous language requiring a protocol to contain the date and education or training of the pharmacist as referenced in Section 4; to add a Section 4 to restore the previous language pertaining to the required pharmacist education and training, including that a failure to be educated and trained before utilizing a prescriber approved protocol may result in disciplinary action pursuant to KRS 315.121(1)(a); to add a Section 5 to: restore the previous language on the list of authorized conditions for which board authorized protocols may be established; and include in this list, coronavirus (COVID-19) infection pursuant to recommendations by the CDC; and to amend Section 5 to comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Optometric Examiners

201 KAR 005:002. Board administration and optometric practice. Dr. Joe Ellis, vice president, and Carson Kerr, executive director, represented the board.

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 3, 5, 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.

Board of Nursing

201 KAR 020:411. Sexual Assault Nurse Examiner Program standards and credential requirements. Kelly Jenkins, executive director, and Jeffrey Prather, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 2, 7, 9, and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 020:472. Initial approval for dialysis technician training programs.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 4 through 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.

201 KAR 020:476. Dialysis technician credentialing requirements for initial credentialing, renewal, and reinstatement.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 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.

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

301 KAR 002:144. Fall wild turkey hunting. Steven Fields, staff attorney, and Jenny Gilbert, legislative liaison, represented the department.

In response to questions by Senator Thayer, Ms. Gilbert stated that the department did not have data to indicate whether or not Kentucky's turkey population was in decline, and the department was currently studying the matter. The department had received concerns from sportsmen that precipitated this proposed reduction in turkey limits, which might be temporary depending on biological findings. The two turkey limit was per person during the fall turkey season, with additional provisions related to turkey beards. The turkey beard length helped a hunter judge the age of a turkey. The department would report on the turkey population study once it was completed.

In response to a question by Co-Chair Lewis, Mr. Fields stated that Kentucky had been more conservative regarding protection of the turkey population than many states, which were experiencing significant decreases.

A motion was made and seconded to approve the following amendments: to amend Section 5(4) to align the baited area provisions with 301 KAR 2:140; and to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 4 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.

301 KAR 002:300. Black bear seasons and requirements.

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

Licensing

301 KAR 005:001. Definitions for 301 KAR Chapter 5.

301 KAR 005:010. License agent applications and agreements.

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.

301 KAR 005:020. License agent requirements and responsibilities.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 2, 4, and 5 to comply with the drafting requirements of KRS Chapter 13A; and to amend Section 6 to clarify the appeal process. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 005:022. License, tag, and permit fees.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 4, 5, and 7 to comply with the drafting requirements of KRS Chapter 13A; to amend Section 1(10) to clarify that the hunting permit fee for Land Between the Lakes is federally established on the Web site; and to amend Section 1 to revise licensure names in compliance with Senate Bill 241 from the 2023 Regular Session of the General Assembly. Without objection, and with agreement of the agency, the amendments were approved.

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. Amy Barker, assistant general counsel, and Leah Boggs, general counsel, represented the department.

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

A motion was made and seconded to approve the following amendments: to amend Section 1 and DJJPP 713, Restraints and Control, to specify that the policy applies to all state operated juvenile detention centers and Level Four youth development centers. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND LABOR CABINET: Office of Unemployment Insurance

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

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

787 KAR 001:100. Week of unemployment defined.

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.

PUBLIC PROTECTION CABINET: Department of Insurance: Assets and Liabilities

806 KAR 006:072. Valuation of life insurance and annuity reserves. Abigail Gall, executive advisor, and Shaun Orme, executive advisor, 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 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.

Department of Financial Institutions: Securities

808 KAR 010:440. Examples of dishonest or unethical practice for broker-dealers and agents. Justin Burse, acting commissioner; Marni Gibson, deputy commissioner; and Gary Stephens, assistant general counsel, represented the department.

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 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.

808 KAR 010:450. Examples of dishonest or unethical practice for investment advisers and investment adviser representatives.

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 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.

Student Education Loan Servicing

808 KAR 016:010. Licensing, registration, renewal and fees.

A motion was made and seconded to approve the following amendments: to amend Section 2 for consistency with the KRS 286.12-020(4); to amend Section 3 for consistency with KRS 286.12-070(4); and to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 2 through 4 and 6 for clarity and to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

808 KAR 016:020. Recordkeeping requirements; unfair, deceptive, or predatory practices.

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

Department of Charitable Gaming: Charitable Gaming

820 KAR 001:005. Charitable gaming licenses and exemptions. Doug Hardin, staff attorney, and Kim Sutherland, division director, represented the department.

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

820 KAR 001:025. Reports.

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

820 KAR 001:130. Administrative actions.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 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: Office of Inspector General: Controlled Substances

902 KAR 055:110. Monitoring system for prescription controlled substances. Kara Daniel, deputy inspector general, and Adam Mather, inspector general, represented the office.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 2, 4, and 11 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 001:082. Coverage provisions and requirements regarding rural health clinic services. Jonathan Scott, regulation coordinator, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 3, 5, 7, 9, 10, and 13 to comply with the drafting requirements of KRS Chapter 13A; to amend Section 1 to add to the definition for “approved behavioral health practitioner under supervision” to include, “a behavioral health associate, as permissible pursuant to 907 KAR Chapter 15”; and to amend Section 3 to: clarify that day treatment services shall be provided under the supervision of a licensed or certified behavioral health practitioner or a behavioral health practitioner working under billing, rather than clinical supervision; establish that service criteria for intensive

outpatient programs shall be for substance use disorder; add to the list of partial hospitalization criteria: psychoeducation; and peer support services; and delete requirements for agreements to link providers. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred or removed from the April 11, 2023, subcommittee agenda:

DEPARTMENT OF LAW: Kentucky Opioid Abatement Advisory Commission

040 KAR 009:010E. General application procedure.

040 KAR 009:010. General application procedure.

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

040 KAR 009:020. Local government application procedure.

BOARDS AND COMMISSIONS: Board of Licensure for Long-Term Care Administrators

201 KAR 006:060. Fees.

Board of Nursing

201 KAR 020:478. Dialysis technician scope of practice, discipline, and miscellaneous requirements.

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 001:120. Department of Juvenile Justice Policies and Procedures Manual: Health and Safety Services.

505 KAR 001:140. 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.

PUBLIC PROTECTION CABINET: Department of Financial Institutions: General Provisions

808 KAR 001:170. Licensing and registration.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Health Services and Facilities

902 KAR 020:480. Assisted living communities.

902 KAR 020:490. Rural emergency hospitals.

The subcommittee adjourned at 1:30 p.m. The next meeting of this subcommittee was tentatively scheduled for May 9, 2023, at 1 p.m.