

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the September Meeting

September 12, 2023

Call to Order and Roll Call

The September meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, September 12, 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; Senators Julie Raque Adams, Damon Thayer, and David Yates; Representatives Randy Bridges, Deanna Frazier Gordon, and Daniel Grossberg.

Guests: Cassie Trueblood, Education Standards Professional Board; Jennifer Southfield, Secretary of State; Leslie Saunders and John Steffan, Registry of Election Finance; Charla Sands, Department of Military Affairs; Joe Donohue, Board of Accountancy; Eden Davis, Amber Harding, and Johana Swiney, Board of Pharmacy; Marc Kelly, Board of Social Work; Matt Byrd and Doug Hardin, Boxing and Wrestling Commission; Samuel Thorner, Kentucky Housing Corporation; Eddie Sloan and John Wood, Board of Emergency Medical Services; Dave Dreves, Steven Fields, and Jenny Gilbert, Department of Fish and Wildlife Resources; Clint Quarles, Department of Agriculture; Amy Barker and Jonathan Gifford, Law Enforcement Council; Kara Daniel and Adam Mather, Office of Inspector General; Julie Brooks, Bob McFalls, and Kyndall Raburn, Department for Public Health; Wesley Duke, Lisa Lee, and Jonathan Scott, Department for Medicaid Services; John Bowman, Dream.org; Steve Houghland and Molly Lewis; Kentucky Primary Care Association; Ann Perkins, Safe Harbor; Sheila Schuster, Advocacy Action Network; and Melvyn Yeoh, DMD, University of Kentucky.

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

Administrative Regulations Reviewed by this Subcommittee:

EDUCATION PROFESSIONAL STANDARDS BOARD: Teaching Certificates

016 KAR 002:240E. Interim certificate. Cassie Trueblood, counsel, represented the board.

SECRETARY OF STATE: Safe at Home Program

030 KAR 010:010E. Definitions for 30 KAR Chapter 10. Jennifer Scutchfield, assistant Secretary of State, represented the office.

030 KAR 010:020E. Application and certification.

030 KAR 010:030E. Notification of expiration and recertification in the Safe at Home Program.

030 KAR 010:040E. Cancellation, appeal, and withdrawal.

030 KAR 010:050E. Application assistant training and designation.

030 KAR 010:060E. Release of participant information to criminal justice officials or agencies.

030 KAR 010:070E. School enrollment and record transfers.

030 KAR 010:080E. Substitute address.

030 KAR 010:090E. Exercise of program participant's privileges.

030 KAR 010:100E. Attaining age of majority.

030 KAR 010:110E. Service of process.

030 KAR 010:120E. Recognition of certification in other state.

Kentucky Registry of Election Finance: Reports and Forms

032 KAR 001:020. Statement of spending intent and appointment of campaign treasurer. Leslie Saunders, general counsel, and John Steffen, executive director, represented the registry.

In response to a question by Representative Grossberg, Mr. Steffen stated that these administrative regulations applied to all political parties. Changes were based on recent legislation.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with

agreement of the agency, the amendments were approved.

032 KAR 001:030. Campaign finance statements.

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

032 KAR 001:046. Repeal of 32 KAR 1:045 and 32 KAR 1:070.

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

032 KAR 001:050. Political organization registration.

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

Department of Military Affairs: Military Burial Honors Program

106 KAR 004:020. Commonwealth of Kentucky Military Burial Honor Guard Trust Fund and Military Burial Honor Guard. Charla Sands, counsel, represented the department.

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

BOARDS AND COMMISSIONS: Kentucky State Board of Accountancy

201 KAR 001:050. License application. Joe Donohue, executive director, represented the board.

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

Board of Pharmacy

201 KAR 002:076. Compounding. Eden Davis, general counsel, and Amanda Harding, pharmacist inspector, 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 6 and 8 through 10 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 Social Work

201 KAR 023:160E. Temporary permission to practice. Marc Kelly, executive director, represented the board.

Boxing and Wrestling Commission

201 KAR 027:005. Definitions for 201 KAR Chapter 27. Matt Byrd, executive director, and Doug Hardin, staff attorney, represented the commission.

In response to questions by Co-Chair Lewis, Mr. Byrd stated that he believed licensure fees were last addressed between 2006 and 2008. Contestant licensing had been established by administrative regulation for many years.

In response to a question by Senator Yates, Mr. Byrd stated that if a youth amateur boxing event charged admission, the event came under the commission's regulatory jurisdiction; therefore, there was effectively a statutory prohibition on charging admission for youth amateur boxing events. Mr. Hardin stated that there had been a bill during the 2023 Regular Session of the General Assembly to address the issue of youth amateur boxing events; however, that bill did not pass.

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.

201 KAR 027:008. License requirements and fees.

A motion was made and seconded to approve the following amendments: to amend Section 10 and incorporated material to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 027:011. General requirements for boxing and kickboxing shows.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 20, and 23 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 027:012. General requirements for wrestling shows.

201 KAR 027:016. General requirements for mixed martial arts matches, shows, or exhibitions.

In response to a question by Senator Yates, Mr. Byrd stated that changes to weight classes and ranges applied to mixed martial arts only.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 18, 20, and 24 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

INDEPENDENT ADMINISTRATIVE BODIES: Kentucky Housing Corporation

202 KAR 002:020E. Rural Housing Trust Fund. Samuel Thorner, general counsel, represented the corporation.

Board of Emergency Medical Services

202 KAR 007:555. Ground agencies. Eddie Sloan, executive director, and John Wood, counsel, represented the board.

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.

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

301 KAR 001:201. Taking of fish by traditional fishing methods. Dave Dreves, fisheries director; Steven Fields, staff attorney; and Jenny Gilbert, legislative liaison, represented the department.

301 KAR 001:410. Taking of fish by nontraditional fishing methods.

In response to a question by Co-Chair Lewis, Mr. Dreves stated that traditional fishing meant using a rod and reel. Any other legal method of fishing was classified as nontraditional.

DEPARTMENT OF AGRICULTURE: Amusement Rides

302 KAR 016:010. Business registration and permit for amusement rides or attractions. Clint Quarles, counsel, represented the department.

In response to questions by Senator Yates, Mr. Quarles stated that rides could be verified as registered with the department by a seal on the ride and by contacting the department, which could also provide insurance information in the event of an injury.

A motion was made and seconded to approve the following amendments: to amend Section 2 to establish that a permit expires at the end of the calendar year; to amend Section 4 to clarify submission procedures for itineraries; and to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 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.

302 KAR 016:020. Inspection and operation of amusement rides or amusement attractions.

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 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 016:030. Determination of administrative or safety violations which cannot be corrected immediately; section stop order.

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

302 KAR 016:071. Repeal of 302 KAR 16:070.

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.

302 KAR 016:072. Notification of occurrence involving an amusement ride or attraction.

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

302 KAR 016:111. Violations, civil penalties, revocations, and suspensions of permits for amusement rides or attractions.

Grain

302 KAR 033:010. Grain dealers and grain warehouse operators.

A motion was made and seconded to approve the following amendments: to amend Section 1 to establish application and renewal procedures for grain dealer and grain warehouse operator licenses; to amend Sections 4 and 5 to clarify deadlines for moving grain out of temporary storage; and to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; Section 1 through 8; and the material incorporated by reference 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 Justice: Kentucky Law Enforcement Council

503 KAR 001:140E. Peace officer, telecommunicator, and court security officer professional standards. Amy Barker, assistant general counsel, and Jonathan Gifford, staff attorney, represented the department.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Certificate of Need

900 KAR 006:080E. Certificate of Need emergency circumstances. Kara Daniel, deputy inspector general, and Adam Mather, inspector general, represented the division.

Department for Public Health: Health Services and Facilities

902 KAR 020:500. Medical reserve corps. Julie Brooks, regulation coordinator; Bob

McFalls, branch manager; and Kyndall Raburn, public health associate, represented the department.

Department for Medicaid Services

907 KAR 001:025. Payment for services provided by an intermediate care facility for individuals with an intellectual disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit. Wes Duke, general counsel; Lisa Lee, commissioner; and Jonathan Scott, regulation coordinator, represented the department. John Bowman, campaign coordinator, Dream.org; Dr. Melvyn Yeoh, University of Kentucky; Ann Perkins, Safe Harbor Kentucky; Sheila Schuster, executive director, Kentucky Mental Health Coalition; and Alicia Whatley, Kentucky Oral Health Coalition, appeared in support of 907 KAR 1:038, 1:126, and 1:632.

907 KAR 001:038. Hearing Program coverage provisions and requirements.

907 KAR 001:126. Dental services' coverage provisions and requirements.

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

In response to a question by Co-Chair Lewis, Mr. Bowman stated that Dream.org supported 907 KAR 1:038, 1:126, and 1:632. These programs were important for communities and especially vital for people who were in recovery.

In response to a question by Co-Chair Lewis, Ms. Perkins stated that Safe Harbor Kentucky supported these administrative regulations, which were part of the support system for domestic violence survivors. It was difficult to escape domestic violence situations without a strong community support system.

In response to questions by Senator Thayer, Ms. Perkins stated that these programs were necessary to help people break the cycle of domestic violence and dependence. Good health was a part of obtaining employment. In her experience, most Medicaid recipients worked part time. If recipients transitioned to full-time employment, they lost Medicaid benefits.

In response to a question by Representative Frazier Gordon, Ms. Perkins stated that, in addition to Medicaid, she also relied on Vocational Rehabilitation, which had work requirements. Senator Thayer stated that he appreciated the work Ms. Perkins did to help domestic violence survivors. However, Kentucky was investing a significant amount in Medicaid, at a time when the Commonwealth was experiencing a low workplace participation rate.

Senator Yates stated that able bodied people should participate in the workforce, and participation required providing for basic needs like vision, dental, and hearing. In response, Ms. Perkins stated that she recently encountered a cancer patient who was unable to begin chemotherapy because of abscessed teeth. Because Medicaid reimbursement rates were so low, the dental care and the chemotherapy were delayed due to difficulty finding a Medicaid participating dental provider.

In response to a question by Co-Chair Lewis, Ms. Schuster stated that the Kentucky Mental Health Coalition supported these administrative regulations because Medicaid recipients needed integrated health services. Conditions related to vision and hearing had safety implications. Conditions pertaining to vision, dental, and hearing also contributed to other significant health problems, which were often costly. Dental pain was linked with opioid addiction. Unresolved medical conditions also created obstacles to workforce readiness. Ms. Schuster referenced a letter of support from the Mackenzie Wallace, director of public policy with the Alzheimer's Association.

Senator Thayer stated that Representative Poore Moser informed him that the General Assembly was working toward addressing the Medicaid benefits cliff, which ended benefits abruptly if certain criteria were met. Legislators were working to develop a more transitional system to phase out benefits for those recipients leaving the program. Vocational Rehabilitation, which had work requirements, might be a vehicle to assist with the transition process.

In response to a question by Co-Chair Lewis, Ms. Whatley stated that the Kentucky Oral Health Coalition supported a permanent path for these programs. The coalition thanked the General Assembly for assisting with and understanding the importance of continuity of care for those who had already begun treatment under these administrative regulations. Providers had been reluctant to participate in the Medicaid program due to the tenuousness of these administrative regulations and because of low reimbursement rates.

In response to a question by Co-Chair Lewis, Dr. Yeoh stated that oral cancer patients often had deformities from treatment for which Medicaid previously did not reimburse. This expanded program was a step toward addressing those and many other types of situations. There was a shortage of providers, especially in rural areas, and many patients traveled long distances for care. Late treatment, which often had poorer outcomes, could be expensive because progressive conditions sometimes required surgery or hospitalization. Medicaid providers improved the economic conditions of their communities.

In response to a question by Senator Yates, Ms. Lee stated that the agency amendment proposed removing certain diagnostic service coverage limitations that were

determined to be unnecessarily stringent.

Representative Bridges stated that the Administrative Regulation Review Subcommittee was not the appropriate venue for considering this appropriation related matter.

A motion was made and seconded to approve agency and suggested amendments for 907 KAR 1:025, 907 KAR 1:038, 907 KAR 1:126, and 907 KAR 1:632. The motion failed.

Department for Community Based Services: Supplemental Nutrition Assistance Program

921 KAR 003:020. Financial requirements. Laura Begin, regulation coordinator, and Amandeep Burns, division supervisor, represented the department.

921 KAR 003:095. Elderly Simplified Application Project or "ESAP."

A motion was made and seconded to approve the following amendments: to amend Sections 5 and 8 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 September 12, 2023, subcommittee agenda:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY: Division of Student and Administrative Services: KHEAA Grant Programs

011 KAR 005:001. Definitions pertaining to 11 KAR Chapter 5.

011 KAR 015:040. Kentucky Educational Excellence Scholarship award determination procedure.

011 KAR 015:110. Scholarships for Registered Apprenticeship and Qualified Workforce Training programs.

PERSONNEL BOARD

101 KAR 001:365E. Appeal and hearing procedures.

KENTUCKY COMMISSION ON HUMAN RIGHTS

104 KAR 001:010. Posting, distribution and availability of notices and pamphlets.

104 KAR 001:040. Guidelines for advertising employment or licensing opportunities.

104 KAR 001:050. Standards and procedures for providing equal employment opportunities.

104 KAR 001:080. Guidelines on fair housing.

104 KAR 001:100. Nondiscrimination on the basis of disability by a place of public accommodations, licensing agencies and trade organizations.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:020. Examination.

201 KAR 002:050. Licenses and permits; fees.

201 KAR 002:105. Requirements for wholesalers, medical gas wholesalers, wholesale distributors, and virtual wholesale distributors.

201 KAR 002:205. Pharmacist-in-charge.

201 KAR 002:225. Special limited pharmacy permit- medical gas.

201 KAR 002:240. Special limited pharmacy permit- charitable.

201 KAR 002:320. Requirements for manufacturers and virtual manufacturers.

201 KAR 002:340. Special limited pharmacy permit- clinical practice.

201 KAR 002:390. Requirements for third-party logistics providers.

Board of Nursing

201 KAR 020:700. Medication aide training programs and credentialing of medication aides.

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

301 KAR 001:122. Importation, possession, and prohibited aquatic species.

DEPARTMENT OF AGRICULTURE: Livestock, Poultry, and Fish

302 KAR 022:150. Cervids.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division for Air Quality: National Ambient Air Quality Standards

401 KAR 051:010. Attainment status designations.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Justice: Capital Punishment

501 KAR 016:310. Pre-execution medical actions.

Department of Juvenile Justice

505 KAR 001:010. Definitions.

505 KAR 001:100. Admissions.

505 KAR 001:110. Intake and orientation.

505 KAR 001:180. Day treatment admissions.

505 KAR 001:185. Day treatment programs.

505 KAR 001:210. Restraints and control methods.

505 KAR 001:220. Transportation of juveniles.

505 KAR 001:240. Dietary services.

505 KAR 001:250. Drug screening and testing.

505 KAR 001:260. Education.

505 KAR 001:270. Grievances.

505 KAR 001:280. Hair and grooming.

505 KAR 001:290. Juvenile allowance and work detail.

505 KAR 001:300. Juvenile records and information.

505 KAR 001:310. Leave, releases, and furloughs.

505 KAR 001:320. Library services.

505 KAR 001:330. Personal property, dress, and clothing and bedding supply.

505 KAR 001:340. Recreation.

505 KAR 001:350. Religious practice.

505 KAR 001:360. Searches.

505 KAR 001:370. Treatment.

505 KAR 001:380. Mail, visiting, and telephone use.

505 KAR 001:390. Juvenile Accounts and Youth Activity Fund Account.

505 KAR 001:400. Behavior management and progressive discipline.

505 KAR 001:410. Isolation and protective custody.

505 KAR 001:420. Youthful offenders.

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

702 KAR 007:065. Designation of agent to manage middle and high school interscholastic athletics.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Sports
Wagering: Licensing

809 KAR 001:002E. Service provider licensing.

809 KAR 001:003E. Occupational licenses.

Sports Wagering: Technical Criteria

809 KAR 010:001E. General provisions.

809 KAR 010:002E. Standards for sports wagering.

809 KAR 010:003E. Technical requirements and oversight.

809 KAR 010:004E. Sports wagering accounts.

809 KAR 010:005E. Licensed premises.

809 KAR 010:006E. Audit and internal control standards.

809 KAR 010:007E. Responsible gaming and advertising.

809 KAR 010:008E. Disciplinary actions and hearings.

Horse Racing: General

810 KAR 002:100. Self-exclusion.

Horse Racing: Licensing

810 KAR 003:010E. Licensing of racing associations.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector
General: State Health Plan

900 KAR 005:020. State Health Plan for facilities and services.

Certificate of Need

900 KAR 006:075. Certificate of need nonsubstantive review.

900 KAR 006:080. Certificate of Need emergency circumstances.

Division of Health Care

902 KAR 020:300. Operation and services; nursing facilities.

Radiology

902 KAR 100:019. Standards for protection against radiation.

902 KAR 100:040. General provisions for specific licenses.

902 KAR 100:050. General licenses.

902 KAR 100:058. Specific licenses to manufacture, assemble, repair, or distribute products.

902 KAR 100:065. Reciprocal recognition.

902 KAR 100:165. Notices, reports, and instructions to employees.

902 KAR 100:185. Standards for protection against radiation from radioactive materials.

902 KAR 100:195. Licensing of special nuclear material.

902 KAR 100:200. Licenses and radiation safety requirements for irradiators.

Department for Community-Based Services: Child Welfare

922 KAR 001:360E. Private child care placement, levels of care, and payment.

922 KAR 001:360. Private child care placement, levels of care, and payment.

Day Care

922 KAR 002:245. Kentucky infant and toddler credential.

922 KAR 002:255. Kentucky school-aged youth development credential.

The subcommittee adjourned at 2:15 p.m. The next meeting of this subcommittee is tentatively scheduled for October 10, 2023, at 1 p.m.