

# **ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**

## **Minutes of December 11, 2023**

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

The December meeting of the Administrative Regulation Review Subcommittee was held on Monday, December 11, 2023 at 1:00 p.m. in Room 149 of the Capitol Annex. Representative Lewis, Co-Chair, called the meeting to order, and roll call was taken.

### **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.

**LRC Staff:** Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Anna Latek, and Carrie Nichols.

**Guests:** Rebecca Gilpatrick and Miles Justice, Kentucky Higher Education Assistance Authority; Will Adams and Chris Chamness, Personnel Cabinet; Joe Ellis and Christi LeMay, Board of Optometric Examiners; Dr. John Park and Michelle Shane, Board of Veterinary Examiners; Kelly Jenkins and Jeffery Prather, Board of Nursing; Stephen Curley, Board of Physical Therapy; Hank Cecil and Marc Kelly, Board of Social Work; Louanna Aldridge and Tony Hatton, Department for Environmental Protection; Abigail Gall and Shaun Orme, Department of Insurance; Jamie Eads, Travers Manley, Hans Stokke, and Jennifer Wolsing, Horse Racing Commission; Julie Brooks, Jennifer Burt, Leslie Cobb, and Holly Lafavers, Department for Public Health; Jonathan Scott, Department for Medicaid Services; Katie Marks, Phyllis Millspaugh, and Rachael Ratliff, Department for Behavioral Health, and Michelle Sanborn; Children's Alliance.

### **Administrative Regulations Reviewed by this Subcommittee:**

#### **KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY: Division of Student and Administrative Services: Teacher Scholarship Loan Program**

011 KAR 008:030. Teacher scholarships. Rebecca Gilpatrick, director of student aid, and Miles Justice, general counsel, represented the division.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4 through 6, 13, and 14 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **PERSONNEL CABINET: Office of the Secretary: Personnel Cabinet, Classified**

101 KAR 002:210E. 2023 and 2024 Plan Year Handbooks for the Public Employee Health Insurance Program. Will Adams, staff attorney, and Chris Chamness, deputy commissioner, represented the cabinet.

101 KAR 002:210. 2024 Plan Year Handbook for the Public Employee Health Insurance Program.

**BOARDS AND COMMISSIONS: Board of Optometric Examiners**

201 KAR 005:005. Fees, fines, and forms. Dr. Joe Ellis, vice president, and Christi LeMay, executive director, represented the board.

In response to questions by Co-Chair West, Dr. Ellis stated that the fee increases were the first by the agency in three to four years. The fee increases were currently being used by the agency, but had not been codified.

A motion was made and seconded to approve the following amendments: to amend the TITLE and the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, 4, 5, 9 through 11, and 14 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Board of Veterinary Examiners**

201 KAR 016:510. Fees for veterinarians. Dr. John Park, chair, and Michelle Shane, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 5 through 7 and 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 016:512. Fees for veterinary technicians.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 4 through 6 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 016:514. Fees for animal control agencies and animal euthanasia specialists.

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.

201 KAR 016:516. Fees – other fees.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 5, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 016:550. Authorization for animal control agencies to apply for a restricted controlled substances certificate from DEA.

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

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5 and 7 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 NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3, 5, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 016:701. Standards for medical records.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5 and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 016:702. Standards for veterinary surgery.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph 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 016:750. Licensed veterinary technicians (LVTs) – Scope of practice and supervisory requirements.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 2 through 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### **Board of Nursing**

201 KAR 020:056. Advanced practice registered nurse licensure and certification requirements. Jeffrey Prather, general counsel, represented the board.

201 KAR 020:220. Nursing continuing education provider approval.

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

### **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.

### **Board of Social Work**

201 KAR 023:055. Inactive status of license. Hank Cecil, chair, and Marc Kelly, executive director, represented the board.

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

## **ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Underground Storage Tanks**

401 KAR 042:250. Petroleum Storage Tank Environmental Assurance Fund reimbursement. Louanna Aldridge, environmental science consultant, and Tony Hatton, commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 4, 8, 9, 12, 15, and 21 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 017:590. Annual report on providers prescribing medication for addiction treatment. 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 STATUTORY AUTHORITY 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.

**Kentucky Horse Racing Commission: Sports Wagering**

809 KAR 001:002. Service provider licensing. Jamie Eads, executive director; Travers Manley, deputy general counsel; and Hans Stokke, sports wagering director, represented the commission.

Senator Thayer stated that the commission deserved credit for the implementation of sports wagering, which was in line with legislative intent.

In response to a question by Co-Chair West, Ms. Eads stated that these administrative regulations would be reviewed by the commission as needs arose, but that no other sports wagering administrative regulations were anticipated from the commission at this time.

Representative Grossberg stated that the implementation and continued growth of sports wagering was a bipartisan issue for the current administration and legislature.

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 8 to comply with the drafting and formatting requirements of KRS Chapter 13A; to amend Section 5 to list the commission's criteria for approving temporary licensure; and to amend Section 8 and incorporated material to correct a form number. Without objection, and with agreement of the agency, the amendments were approved.

809 KAR 001:003. Occupational licenses.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 1 through 7, 9, and 11 to comply with the drafting requirements of KRS Chapter 13A; to amend Section 5 to list the commission's criteria for approving transfer of a temporary license; and to amend Section 6 to include the submission information for an applicant for an employee race and sportsbook license, an information services provider license, and a key employee license. Without objection, and with agreement of the agency, the amendments were approved.

**Sports Wagering: Technical Criteria**

809 KAR 010:001. General provisions.

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

809 KAR 010:002. Standards for sports wagering.

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

809 KAR 010:003. Technical requirements and oversight.

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

809 KAR 010:004. Sports wagering accounts.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6 and 8 through 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.

809 KAR 010:005. Licensed premises.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4, 6, 7, 9, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A; to amend Section 1 to: (a) include the commission's criteria to approve moving kiosks; and (b) require a Certificate of Occupancy for an operator's license; to amend Section 6 to include the commission's criteria for kiosk location; and to amend Section 10 to clarify that surveillance system inspections shall be at least quarterly. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 19 to comply

with the drafting requirements of KRS Chapter 13A; to amend Section 5 to include the commission's criteria for prohibiting records destruction; and to amend Section 16 to clarify that layoff wagers shall be reported to the commission daily. Without objection, and with agreement of the agency, the amendments were approved.

809 KAR 010:007. Responsible gaming and advertising.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; and to amend Section 2 to list the commission's criteria to approve a third party to review a responsible gaming program. Without objection, and with agreement of the agency, the amendments were approved.

809 KAR 010:008. Disciplinary actions and hearings.

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 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.

### **Horse Racing: General**

810 KAR 002:100. Self-exclusion.

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 3, 5, and 6 to comply with the drafting requirements of KRS Chapter 13A; to amend Section 2 to state that public notice approval shall be based on the notices "content, visibility, and readability"; and to amend Section 3 to state that self-exclusion information shall be submitted to the commission based on completeness and ease of dissemination by the commission to the associations. Without objection, and with agreement of the agency, the amendments were approved.

### **Horse Racing: Licensing**

810 KAR 003:010. Licensing of racing associations.

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 7, 10, 11, 13 through 15, and 17 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: Maternal and Child Health**

902 KAR 004:120. Health Access Nurturing Development Services (HANDS) Program. Julie Brooks, regulation coordinator; Leslie Cobb, program administrator; and Holly LaFavers, HANDS supervisor, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 1 to revise the definition for "local implementing agency" to align with the provider qualifications established in Section 3; to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A; and to amend Section 3 to remove provisions that are no longer needed. Without objection, and with agreement of the agency, the amendments were approved.

### **Food and Cosmetics**

902 KAR 045:065. Tattooing.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3, 5, 6, 9, 12, 14, 16, and 17 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 045:070. Body piercing and ear piercing.

A motion was made and seconded to approve the following amendments: to amend Section 18 to add a link to material incorporated by reference on the agency's Web site; and to amend Sections 1 through 3, 5, 8, 9, and 13 through 15 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 for Medicaid Services: Payment and Services**

907 KAR 003:310. Community health worker services and reimbursement. Jonathan Scott, regulation coordinator, represented the department.

In response to questions by Co-Chair West, Mr. Scott stated that the proposed increase in per diem rates for Level I and Level II PRTF services in this amendment would be comparable to those in surrounding states.

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 3, 7, and 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.

### **Psychiatric Residential Treatment Facility Services and Reimbursement**

907 KAR 009:010E. Reimbursement for non-outpatient Level I and II psychiatric residential treatment facility services.



**Department for Behavioral Health, Developmental and Intellectual Disabilities: Mental Health**

908 KAR 002:300. Kentucky problem gambling assistance account. Phyllis Millspaugh, assistant director, and Rachael Ratliff, 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 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; and to add treatment of addictions to the list of purposes for which funding may be requested, as established in KRS 230.826. Without objection, and with agreement of the agency, the amendments were approved.

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

**OFFICE OF THE GOVERNOR: Department of Veterans' Affairs: Veterans' Programs**

017 KAR 006:020. Kentucky Women Veterans Program and coordinating committee, administrative procedures.

017 KAR 006:030. Kentucky Wounded or Disabled Veterans Program, administrative 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.

**FINANCE AND ADMINISTRATION CABINET: Kentucky Public Pensions Authority: General Rules**

105 KAR 001:148E. Merged, split, new, separate, or separated employers or entities.

**BOARDS AND COMMISSIONS: Board of Nursing**

201 KAR 020:057. Scope and standards of practice of advanced practice registered nurses.

201 KAR 020:065. Professional standards for prescribing Buprenorphine-MonoProduct or Buprenorphine-Combined-with-Naloxone by ARNPs for medication assisted treatment for opioid disorder.

201 KAR 020:067. Professional standards for medicinal cannabis.

201 KAR 020:215. Continuing competency requirements.

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

### **Board of Social Work**

201 KAR 023:160. Temporary permission to practice. Hank Cecil, chair, and Marc Kelly, executive director, represented the board. Michelle Sanborn, president, Children's Alliance, appeared in opposition to these administrative regulations.

In response to a question by Co-Chair Lewis, Ms. Sanborn stated that the Children's Alliance was concerned that the overbroad definition for electronic social work service could create barriers for potential practitioners to join the social work field. In the board's Statement of Consideration, the board did not provide comprehensive responses to comments from the Children's Alliance submitted during the public comment period.

In response to a question by Co-Chair Lewis, Mr. Kelly stated that the board's intent was to increase flexibility to licensed social workers regarding telehealth access for their clients. The Children's Alliance's requested amendments would make 201 KAR 023:170 overly restrictive.

In response to questions by Senator Raque Adams, Mr. Kelly stated that the board's Statement of Consideration response, which indicated that the board would not be adopting amendments requested by the Children's Alliance, was sufficient. New social workers would not be prohibited from receiving licensure.

In response to a question by Senator Thayer, Ms. Sanborn requested deferral of these administrative regulations to allow more time for stakeholder discussion.

In response to questions by Co-Chair West, Mr. Kelly stated that there were no other administrative regulations regarding social work telehealth services, and the current administrative regulation had been in place since 2000. The amendment to 201 KAR 023:170 would establish parameters for electronic social work services.

In response to a question by Co-Chair West, Ms. Sanborn agreed that a basic framework was needed, but the Children's Alliance was concerned about the expansion of telehealth therapies to potentially include facsimile or artificial intelligence.

In response to a question by Co-Chair West, Mr. Cecil stated that the board was addressing concerns from their members and had consulted legal counsel in the development of these administrative regulations. The board needed flexibility regarding the use of expanding technology.

In response to questions by Representative Frazier Gordon, Mr. Kelly stated that legislation that passed during the coronavirus (COVID-19) state of emergency had been sufficient at the time, but the board now needed to provide more guidance for social workers regarding evolving technology. Mr. Cecil stated that while initial contact could be made between a potential client and a social worker via email or text, any other technology would fall outside of the board's provisions without these administrative regulations.

In response to a question by Co-Chair Lewis, Mr. Kelly agreed to defer consideration of 201 KAR 023:160 and 023:170. A motion was made by Senator Thayer and seconded by Representative Frazier Gordon to defer consideration of these administrative regulations to the January 2024 subcommittee meeting. Without objection, and with agreement of the agency these administrative regulations were deferred.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4 to comply with the formatting and drafting requirements of KRS Chapter 13A; and to amend Section 5 to add incorporated material. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 023:170. Telehealth and social work practice.

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 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.

### **Board of Licensed Professional Counselors**

201 KAR 036:005. Definitions for 201 KAR Chapter 036.

201 KAR 036:030. Continuing education requirements.

201 KAR 036:040. Code of ethics.

201 KAR 036:045. Distance counseling.

201 KAR 036:050. Complaint management process.

201 KAR 036:060. Qualifying experience under supervision.

201 KAR 036:065. Licensed professional clinical counselor supervisor.

201 KAR 036:070. Application, education, and examination requirements.

201 KAR 036:072. Reciprocity requirements for applicants licensed or certified in another state.

201 KAR 036:075. Renewal, late renewal, and reinstatement of license.

201 KAR 036:090. Administrative hearings for denials and revocation of probated sanction.

**ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Special Waste**

401 KAR 045:010. Definitions for 401 KAR Chapter 045.

401 KAR 045:020. Types of special waste permits.

401 KAR 045:025. Permit review and determination timetables.

401 KAR 045:030. Obtaining a special waste site or facility permit.

401 KAR 045:040. Modification, transfer or revocation of special waste permits.

401 KAR 045:050. Public information procedures for special waste site or facility permits.

401 KAR 045:080. Financial requirements and bonds for special waste facilities.

401 KAR 045:100. Landfarming and composting of special waste.

401 KAR 045:105. Land application of biosolids.

401 KAR 045:140. Conditions applicable to all special waste permits.

401 KAR 045:160. Surface and groundwater monitoring and corrective action for special waste sites or facilities.

401 KAR 042:250. Special waste permit fees.

**PUBLIC PROTECTION CABINET: Department of Financial Institutions: Securities**

808 KAR 010:501. Required forms, fees, filing procedures, and recordkeeping requirements for persons operating pursuant to KRS 292.411 and KRS 292.412, the Kentucky Intrastate Crowdfunding Exemption; and notice filing requirements for federal crowdfunding offerings.

**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 non-substantive review.

**Office of Inspector General**

906 KAR 1:190. Kentucky National Background Check Program (NBCP).

**Department for Community Based Services: Child Welfare**

922 KAR 1:520. Supplements to per diem rates.

**Daycare**

922 KAR 2:280. Background checks for child care staff members, reporting requirements, and appeals.

The subcommittee adjourned at 1:55 p.m. The next meeting of this subcommittee was tentatively scheduled for January 8, 2024, at 1 p.m. in Room 149 of the Annex.