

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of January 8, 2024

Call to Order and Roll Call

The January meeting of the Administrative Regulation Review Subcommittee was held on Monday, January 8, 2024 at 1:00 p.m. in Room 149 of the Capitol Annex. Senator West, 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: Carrie Bass and Jessica Beaubien, Kentucky Public Pension Authority; Eden Davis, Board of Pharmacy; Kelly Jenkins and Jeffrey Prather, Board of Nursing; Representative Steve Bratcher; Lisa Biddle-Puffer and Mary Hayes, Kentucky Association of Health Care Facilities; Joe Jurgensen, Management Systems of Kentucky; Hank Cecil and Marc Kelly, Board of Social Work; Michelle Sanborn, Children’s Alliance; Steven Shannon, Community Mental Health Centers; Brenda Rosen, National Association of Social Workers, Kentucky Chapter; Sara Boswell Janes and Dr. Charles Pemberton, Board of Licensed Professional Counselors; Eddie Sloan and John Wood, Board of Emergency Medical Services; Steven Fields, Jenny Gilbert, and Rich Storm, Department of Fish and Wildlife Resources; Jon Johnson and Ricky Sizemore, Transportation Cabinet; Todd Allen, Board of Education; Marni Gibson and Gary Stephens, Department of Financial Institutions; David Lovely and Valerie Moore, Office of the Inspector General; Jonathan Scott, Department for Medicaid Services; Kelli Blair, Department for Income Support; and Laura Begin, Todd Trapp, and Andrea Day, Department for Community Based Services.

Administrative Regulations Reviewed by this Subcommittee:

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

105 KAR 001:148E. Merged, split, new, separate, or separated employers or entities. Carrie Bass, staff attorney supervisor, and Jessica Beaubien, policy specialist, represented the authority.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 1, 3, 5, and 6 through 9 to comply with the

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

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

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

105 KAR 001:270. Federal tax withholding or direct rollover of eligible distributions.

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, 7, 9, and 10 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: Board of Pharmacy

201 KAR 002:165. Transfer of prescription information. Eden Davis, general counsel, represented the board.

In response to a question by Representative Frazier Gordon, Ms. Davis stated that, in compliance with federal requirements, prescriptions may be transferred among all pharmacies and were not limited to transfers within a particular chain or pharmacy ownership group.

Board of Social Work

201 KAR 023:160. Temporary permission to practice. Hank Cecil, chair, and Marc Kelly, executive director, represented the board.

A motion was made and seconded at the December 11, 2023, subcommittee meeting to approve the following amendments: to amend Sections 1 through 4 to comply with the drafting and formatting 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.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, and 5 to clarify requirements and update incorporated material. 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. Sara Boswell Janes, board counsel, and Dr. Charles Pemberton, board member, represented the board.

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

201 KAR 036:030. Continuing education requirements.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6, 8, 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 036:040. Code of ethics.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 6, 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 036:045. Distance counseling.

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.

201 KAR 036:050. Complaint management process.

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

201 KAR 036:060. Qualifying experience under supervision.

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.

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

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

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

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 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 036:072. Reciprocity requirements for applicants licensed or certified in another state.

In response to a question by Representative Bridges, Ms. Boswell Janes stated that background checks would continue to be required for all applicants.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 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 036:075. Renewal, late renewal, and reinstatement of license.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, 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 036:090. Administrative hearings for denials and revocation of probated sanction.

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

INDEPENDENT ADMINISTRATIVE BODIES: Board of Emergency Medical Services

202 KAR 007:030. Fees of the board. 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 1, 2, and 5 to comply with the drafting requirements of KRS Chapter 13A; and to amend Section 6 to decrease a fee amount. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 007:410. Advanced practice paramedics.

A motion was made and seconded to approve the following amendments: to amend the EMS Advanced Practice Paramedic Scope of Practice document to delete, under the category of Medical/Cardiac Care, "care for working K9 and equine under veterinary oversight" (for a Wilderness Paramedic); and to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 002:030. Commercial guide license. Steven Fields, staff attorney; Jenny Gilbert, legislative liaison; and Rich Storm, commissioner, represented the department.

In response to questions by Representative Frazier Gordon, Mr. Storm stated that tax identification numbers would be utilized to verify legitimate guide companies operating within the state. There had been incidents of outdoor enthusiasts encountering fraudulent guides. The department would follow up with this subcommittee regarding notices from the department on locations where oxygen saturation was being conducted.

In response to a question by Co-Chair Lewis, Mr. Storm stated that the agency was prepared to handle incidents of Chronic Wasting Disease (CWD) in cervid populations across the state, and educational outreach for hunters regarding testing would be a continued focus.

In response to a question by Co-Chair West, Mr. Storm stated that the department did not anticipate needing statutory changes during the remainder of the 2024 Regular Session of the General Assembly; however, if the need did arise, legislation would most likely relate to the transportation of cervids.

TRANSPORTATION CABINET: Department of Highways: Traffic

603 KAR 005:155. Vegetation management. Jon Johnson, assistant general counsel, and Ricky Sizemore, engineering specialist, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 7 to 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: Office of District Support Services: School Administration and Finance

702 KAR 003:330. Liability insurance. Todd Allen, deputy commissioner and general counsel, represented the office.

In response to a question by Co-Chair West, Mr. Allen stated that, in accordance with Senate Bill 3 from the 2023 Regular Session of the General Assembly, school districts were required to provide teachers with primary liability insurance to cover claims incurred during their time in the classroom. This administrative regulation required districts to report to the department pertaining to the required supplemental liability insurance.

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

Office of Special Instructional Services: Instructional Programs

705 KAR 004:231. General program standards for secondary career and technical education programs.

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 2, 4 through 9, 12, and 15 to comply with the drafting and formatting requirements of KRS Chapter 13A; and to amend Section 14 to remove chief state school officer approval for program facilities. Without objection, and with agreement of the agency, the amendments were approved.

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. Marni Gibson, acting commissioner, and Gary Stephens, assistant general counsel, represented the department.

In response to questions by Co-Chair West, Ms. Gibson stated that this administrative regulation would allow the agency to more closely monitor crowdfunding firms operating in Kentucky to protect consumers. The department did not have any concerns with regard to privacy.

A motion as made and seconded to approve the following amendments: to amend Section 7 to: reduce the filing and renewal fees from \$300 to \$250 pursuant to KRS 292.327(3); and allow the filing of a cover letter or a completed Form U-CF to request renewal, rather than requiring both; and to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections

2, 4, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General

906 KAR 1:190. Kentucky National Background Check Program (NBCP). David Lovely, deputy and acting inspector general, and Valerie Moore, policy specialist, represented the office.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 5, and 15 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: Psychiatric Residential Treatment Facility Services and Reimbursement

907 KAR 009:010. Reimbursement for non-outpatient Level I and II psychiatric residential treatment facility services. Jonathan Scott, regulation coordinator, represented the department.

In response to a question by Co-Chair West, Mr. Scott stated that a new standard reimbursement rate of \$500 for PRTF level 1 services would be in place, and \$600 for all subsections of PRTF level 2 services would be implemented.

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

921 KAR 001:410. Child support collection and enforcement. Laura Begin, regulation coordinator; Andrea Day, director, Division of Child Care; and Todd Trapp, director, Division of Family Support, represented the department.

Supplemental Nutrition Assistance Program (SNAP)

921 KAR 003:027. Technical requirements.

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

921 KAR 003:100. Transitional benefit alternative.

Daycare

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

The following administrative regulations were deferred or removed from the January 8, 2024, 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 001:215. Administrative hearing.

BOARDS AND COMMISSIONS: Board of Medical Licensure

201 KAR 009:067. Professional standards and procedures for medicinal cannabis practitioners.

Board of Nursing

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

201 KAR 02:065. 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. Kelly Jenkins, executive director, and Jeffrey Prather, general counsel, represented the board. Representative Steve Bratcher appeared in support of 201 KAR 020:700. Lisa Biddle-Puffer, Kentucky Association of Health Care Facilities; Joe Jurgensen, Management Systems of Kentucky; and Mary Hayes, Kentucky Association of Health Care Facilities, appeared in opposition to 201 KAR 020:700.

In response to questions by Co-Chair West, Mr. Prather stated that this administrative regulation would ensure that the board could provide a cohesive training regimen for certified medication aides administering pre-measured injectable medications, especially insulin. This administrative regulation addressed the implementation of the training regimen, and other administrative regulations filed later would address training for specific kinds of facilities. This administrative regulation could potentially exclude state-funded personal care homes, but the board needed to do an in-depth review to ensure requirements would not be in conflict with federal provisions.

Representative Bratcher stated that the intent of the legislation passed in 2023 was to guarantee that only certified medical staff would be able to administer injectable medications in nursing homes, assisted living facilities, and personal care homes. Personal care homes could experience some financial constraints due to their status as state-funded facilities.

In response to questions by Co-Chair West, Ms. Hayes stated that her agency had asked for a review of the definitions regarding personal care homes for clarity. The intent of the related statute was to exclude state-funded personal care homes from training requirements.

In response to a question by Co-Chair West, Mr. Jurgensen stated that while a large percentage of personal care homes served those with mental disabilities, not all patients met the criteria under that category. The state-funded reimbursement rate for personal care homes was currently \$49.50 per patient per day.

In response to a question by Co-Chair West, Mr. Prather agreed to defer consideration of this administrative regulation to the February meeting of this subcommittee. Without objection, and with agreement of the agency, this administrative regulation was deferred.

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 8 to comply with the drafting and formatting requirements of KRS Chapter 13A; and to update material incorporated by reference to reference the program fees and 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 023:170. Telehealth and social work practice. Hank Cecil, chair, and Marc Kelly, executive director, represented the board. Brenda Rosen, National Association of Social Workers, appeared in support of this administrative regulation. Michelle Sanborn, president, Children's Alliance, and Steve Shannon, executive director of regional programs, Community Mental Health Centers, appeared in opposition to this administrative regulation.

In response to questions by Senator Raque Adams, Mr. Cecil stated that, in consultation with outside agencies, the board added definitions to clarify public information regarding professional activities in online platforms. The board and stakeholders had come to an impasse. With an upcoming compact there was no other administrative regulation in place addressing telehealth for social workers.

In response to a question by Co-Chair West, Ms. Rosen stated that this administrative regulation would protect social workers, the profession, and the public and would help to meet the mental health needs of Kentuckians through access to telehealth services.

In response to a question by Co-Chair West, Ms. Sanborn stated that all communication between a clinician and client, as well as all information given, would be protected under the Health Insurance Portability and Accountability Act (HIPAA) requirements. Due to language and requirement organization within this administrative regulation, non-health communications would also require the same level of protection.

In response to a question by Co-Chair West, Mr. Shannon stated that his agency was concerned with the breadth of the regulatory language, which needed to be clarified, especially regarding 9-8-8 mental health emergency hotline operators.

In response to a question by Co-Chair West, Ms. Sanborn stated that all communication between a clinician and client, as well as all information provided to and steps taken by a clinician, would be protected under HIPAA requirements, including email addresses, physical addresses, and telephone numbers. Her agency's concern was with the difficulty to implement collection and maintenance of this information for each patient on a day-to-day basis.

Senator Raque Adams stated that there seemed to be further issues that needed to be worked through with stakeholders.

In response to a question by Co-Chair West, Mr. Cecil stated that there were some misunderstandings regarding secure versus non-secure communications and that 9-8-8 would always be exempt. Mr. Kelly stated that all consent would be completed upon intake of a patient, and informed consent would be dealt with at the start of a social worker's appointments with a patient.

In response to a question by Representative Grossberg, Mr. Shannon stated that this administrative regulation did not clearly define what constituted an emergency. A definition was needed to ensure protection for workers who staffed crisis hotlines. Ms. Sanborn stated that Section 2 of this administrative regulation applied to all electronic communications with a client, either official or potential, and was going to be overburdensome.

In response to a question by Senator Raque Adams, Ms. Sanborn stated that many of the social workers affiliated with her agency did not fully understand this administrative regulation. Section 2 of this administrative regulation needed to be clarified. Mr. Cecil stated that stakeholders had not proposed specific amendment language to the board.

Senator Raque Adams requested that the board defer this administrative regulation to the February meeting of this subcommittee.

Senator Thayer strongly encouraged the board to agree to defer consideration of this administrative regulation to the February meeting of this subcommittee.

In response to a question by Representative Grossberg, Mr. Cecil stated that Ms. Sanborn had not agreed to provide specific amendment language in writing to the board, and the board needed the specific language before making decisions.

Co-Chair Lewis stated that if a deferral was requested, both agencies could meet to clarify language.

Co-Chair West stated that if a resolution could not be reached, it was possible that this administrative regulation would be found deficient and added to Senate Bill 65 for this legislative session. If Senate Bill 65 passed, this administrative regulation would be voided. The board would then be statutorily prohibited from filing the same or a similar administrative regulation.

In response to a question by Co-Chair West, Mr. Kelly agreed to defer consideration of this administrative regulation to the February meeting of this subcommittee. Without objection, and with agreement of the agency, this administrative regulation was deferred.

A motion was made and seconded at the December 11, 2023, subcommittee meeting 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.

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 045:250. Special waste permit fees.

Merchant Electric Generating Facilities (MEGF)

401 KAR 103:005. Definitions related to 401 KAR Chapter 103.

401 KAR 103:010. Notification and transfer procedures for merchant electric generating facilities.

401 KAR 103:020. Decommissioning standards.

401 KAR 103:030. Financial requirements.

JUSTICE AND PUBLIC SAFETY CABINET: Internal Investigations Branch: Abuse Investigation

500 KAR 013:020. Internal Investigations Branch.

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.

Department for Community Based Services: Child Welfare

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

The subcommittee adjourned at 2:43 p.m. The next meeting of this subcommittee was tentatively scheduled for February 12, 2024, at 1 p.m. in Room 149 of the Annex.