

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**  
**Minutes of February 12, 2024**

**Call to Order and Roll Call**

The February meeting of the Administrative Regulation Review Subcommittee was held on Monday, February 12, 2024, 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, Damon Thayer, and David Yates; 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, Public Pensions Authority; Joseph Donohue, Board of Accountancy; Leanne Diakov, Board of Medical Licensure; Kelly Jenkins and Jeffrey Prather, Board of Nursing; Steven Fields, Department of Fish and Wildlife; Heather Becker and Clint Quarles, Department of Agriculture; Jamie Eads and Jennifer Wolsing, Horse Racing Commission; Laura Begin, Andrea Day, David Lovely, Valerie Moore, and Kelli Root, Cabinet for Families and Children; Mindy Coleman, Jockeys Guild; Brian Hooker, Jimmy Lewis, and Anthony Lovett, Health Directions, Inc.; Deborah Carroll, Joyce Lewis, and Christy Shannon, Professional Home Health Care Agency, Inc.; Heidi Schissler Lanham, Protection and Advocacy; Evan Reinhardt, Kentucky Home Health Care Association; Dr. Ryan Smith, MD, Kentucky Academy of Eye Physicians and Surgeons; and Marie Cull, Cull and Hayden, PSC.

**The Administrative Regulation Review Subcommittee met on Monday, February 12, 2024, and submits this report:**

**Administrative Regulations Reviewed by this Subcommittee:**

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

105 KAR 001:215. Administrative hearing. 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 NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3 through 6, 8, 9, 11 through 13, 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.

## **BOARDS AND COMMISSIONS: State Board of Accountancy**

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

In response to questions by Co-Chair Lewis, Mr. Donohue stated that the window to complete examinations for licensure would be increased from 18 months to 30 months to align timelines more closely with surrounding states and to ease entry into the job market for new accountants because there was currently a surplus of jobs.

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

### **Board of Medical Licensure**

201 KAR 009:067. Professional standards and procedures for medicinal cannabis practitioners. Leanne Diakov, general counsel, Board of Medical Licensure, and Jeffry Prather, general counsel, Board of Nursing, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4 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.

### **Board of Nursing**

201 KAR 020:057. Scope and standards of practice of advanced practice registered nurses. 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 1, 3, 6 through 9, 11, and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

In response to a question by Co-Chair Lewis, Mr. Prather stated that this administrative regulation was changed to allow for medication monitoring programs other than the Kentucky All Schedule Prescription Electronic Reporting (KASPER) program in case KASPER stopped being implemented or was changed to a different monitoring system.

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

A motion was made and seconded to approve the following amendments: to amend Section 6 to add that the required continuing education subject areas include indications of cannabis use disorder; to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 8 and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A; and to amend Section 10 to add incorporated material. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 020:215. Continuing competency requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 5 and 8 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 020:225. Reinstatement of license.

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.

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

In response to a question by Representative Bridges, Mr. Prather stated that stakeholder concerns regarding funding options for training would most likely be addressed by statutory changes included in the proposed House Bill 493 from the 2024 Regular Session of the General Assembly. This administrative regulation would allow agencies to create and implement Certified Nursing Assistant (CNA) training programs if statutory requirements are met.

A motion was made and seconded at the January 8, 2024, subcommittee meeting to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs, Sections 1 through 8, and incorporated material 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: Wildlife**

301 KAR 004:021. Repeal of 301 KAR 004:020 and 301 KAR 004:050. Steven Fields, staff attorney, represented the department.

**Licensing**

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

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.

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 Section 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 005:200. Special commission permits for incorporated nonprofit wildlife conservation organizations.

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

#### **GENERAL GOVERNMENT CABINET: Department of Agriculture**

302 KAR 002:010. Access to public records of the Kentucky Department of Agriculture. Heather Becker, general counsel, and Clint Quarles, attorney, represented the department.

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

#### **Amusement Rides**

302 KAR 016:150. Qualification and registration of persons designated to perform amusement safety inspections.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs, Sections 1 through 3, 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.

#### **PUBLIC PROTECTION CABINET: Horse Racing Commission: Flat and Steeplechase Racing**

810 KAR 004:070. Jockeys and apprentices. Jamie Eads, executive director, and Jennifer Wolsing, general counsel, represented the commission. Mindy Coleman, counsel, Jockey's Guild, appeared in support of this administrative regulation.

In response to a question by Co-Chair Lewis, Ms. Coleman stated that the Jockey's Guild wanted to thank Senator Thayer as well as multiple inter-agency representatives who supported the new three-tier jockey fee schedules.

In response to a question by Co-Chair Lewis, Senator Thayer stated that after two years of working to increase jockey pay scales to be commensurate with increased race purses, a new fee mount system would be implemented across the state. Senator Thayer thanked the agencies for working together to create this administrative regulation.

Co-Chair Lewis thanked Senator Thayer for his continued support of this important industry.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 4 and 14 to comply with the drafting 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: State Health Plan**

900 KAR 005:020. State Health Plan for facilities and services. David Lovely, acting deputy inspector general, and Valerie Moore, policy specialist, represented the office. Deborah Carroll, RN, administrator, Professional Home Health Care Agency, Inc.; Marie Cull, Cull and Hayden PSC; Joyce Lewis, president, Professional Home Health Care Agency; Evan Reinhardt, executive director, Kentucky Home Care Association; and Christy Shannon, general counsel, Health Directions, Inc., appeared in support of these administrative regulations. Heidi Schissler Lanham, legal director, Kentucky Protection and Advocacy, and Dr. Ryan Smith, M.D., Kentucky Academy of Eye Physicians and Surgeons, appeared in opposition to these administrative regulations.

In response to a question by Co-Chair Lewis, Ms. Carroll, Ms. Cull, Ms. Lewis, Mr. Reinhardt, and Ms. Shannon thanked the office for revising the home health provisions in these administrative regulations. While issues of concern remained, they could work within the revised framework.

In response to a question by Co-Chair Lewis, Dr. Smith stated that he was opposed to the revised ownership provisions for ambulatory surgical centers (ASCs). They would increase costs; create issues regarding referrals, including the potential for fraud; and undo the office's previous agreement to remove a less expansive exception. Any changes to the State Health Plan should originate from the Certificate of Need Task Force.

In response to a question by Co-Chair Lewis, Mr. Lovely stated that the ASC changes created a limited exception to increase access to these types of services. They did not override the federal financial prohibitions contained in the Stark Law.

In response to questions by Co-Chair West, Mr. Lovely stated that the proposed changes were intended to be a strategic carve out with minimal impact. They were submitted with the other changes due to previous amendments and delays.

In response to a question by Co-Chair West, Dr. Smith stated that compliance with the ASC changes would not be possible without violating a federal decision regarding fraud.

In response to a question by Co-Chair West, Mr. Lovely stated that when asked, the office had refused to remove this group of changes from the revised plan.

In response to a question by Co-Chair West, Ms. Schissler Lanham stated that there were four new statutory criteria that needed to be included for intermediate-care facilities for individuals with an intellectual disability (ICF/ID). The terminology used also needed to be statutorily aligned. Implementation would be problematic without further clarification. Mr. Lovely stated that the ICF/ID provisions were more confusing than in conflict, but the statute would supersede regardless.

In response to a question by Co-Chair West, Ms. Schissler Lanham and Mr. Lovely agreed to work on additional amendments at the committee of jurisdiction to resolve these remaining issues.

A motion was made and seconded to approve the following amendments: to amend Section 2 and the State Health Plan for Facilities and Services to: update the edition date to February 2024; amend Level II Psychiatric Residential Treatment Facility (PRTF) provisions to delete: documentation and inventory requirements; a requirement that the number of beds requested for each specialized program shall be calculated using an annual average occupancy rate of 75 percent; and a requirement that certain applicants are given priority and establish instead that the applications shall be subject to nonsubstantive review; amend home health agency provisions to: remove a requirement that an application by a licensed Kentucky acute care hospital, critical access hospital, or nursing facility proposing to establish a home health service under specified circumstances shall be subject to nonsubstantive review and establish instead that it shall be consistent with the state health plan if the service area is no larger than the county in which the facility is located and contiguous counties, and the facility documents in the last 12 months, the inability to obtain timely discharge for patients who reside in the county of the facility or a contiguous county and who require home health services at the time of discharge; and insert a requirement that an application by a licensed Kentucky acute care hospital, critical access hospital, or nursing facility proposing to expand a home health service shall be subject to nonsubstantive review if no existing, licensed home health agency is available and willing to accept the referral, the facility documents its efforts to find a home health agency, and the license issued specifies this limitation; amend Cardiac Catheterization Service provisions to provide applicants an alternative of using other verifiable data under specified circumstances; amend Ambulatory Surgical Center provisions to update and replace requirements for ownership, training, facility location, number of centers, accreditation requirements, and compliance with federal kickback and fee-splitting laws; and comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### **Certificate of Need**

900 KAR 006:075. Certificate of need non-substantive review

A motion was made and seconded to approve the following amendments: to amend Section 1 to add a definition for ""psychiatric residential treatment facility" or "PRTF""; to amend Section 2 to specify that Level II PRTFs shall be subject to the nonsubstantive review process; and to amend Section 2(3)(i) to: remove an application proposing to establish a home health service from nonsubstantive review; and mirror the language from the State Health Plan for Facilities and Services in 900 KAR 5:020 regarding an application to expand a home health service by specifying that the application shall be subject to nonsubstantive review if the facility provides services exclusively to patients discharged from its facility who require home health services at the time of discharge; no existing, licensed home health agency is available and willing to accept the referral; the hospital or nursing facility documents its efforts to find a Home Health Agency; and the license issued under this subsection contains the limitation set forth herein. Without objection, and with agreement of the agency, the amendments were approved.

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

922 KAR 1:520. Supplements to per diem rates. Laura Begin, regulation coordinator; Andrea Day, director, Division of Child Care; and Kelli Root, assistant director, Division of Protection and Permanency, represented the department.

### **Daycare**

922 KAR 002:100. Certification of family child-care homes.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 4, 11 through 13, 18, and 19 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 002:165. Employee Child Care Assistance Partnership.

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; and to amend Section 9 and incorporated material to make revisions. Without objection, and with agreement of the agency, the amendments were approved.

### **The following administrative regulations were deferred or removed from the February 12, 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.

### **Board of Social Work**

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

### **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 Data Analytics: Data Reporting and Public Use Data Sets**

900 KAR 007:030. Data reporting by health care providers.

900 KAR 007:040. Release of public data sets for health facility and services data.

**Office of Inspector General: Health Services and Facilities**

902 KAR 020:048. Operation and services; nursing homes.

902 KAR 020:086. Operation and services; intermediate care facilities for individuals with intellectual disabilities.

**Department for Medicaid Services**

907 KAR 001:044. Coverage provisions and requirements regarding community mental health center behavioral health services.

907 KAR 001:061. Payments for ambulance transportation.

**Payment and Services**

907 KAR 003:066. Nonemergency medical transportation waiver services and payments.

**Behavioral Health**

907 KAR 015:005. Definitions for 907 KAR Chapter 015.

**Department for Behavioral Health, Developmental and Intellectual Disabilities: Substance Abuse**

908 KAR 001:410. Recovery housing.

The subcommittee adjourned at 2:10 p.m. The next meeting of this subcommittee was tentatively scheduled for March 11, 2024, at 1 p.m. in Room 149 of the Annex.