

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of October 15, 2024

Call to Order and Roll Call

The October meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, October 15, 2024, at 1:00 p.m. in Room 149 of the Capitol Annex. Representative Derek 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; and Representatives Randy Bridges, Deanna Frazier Gordon, and Keturah Herron.

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

Guests: Cassie Trueblood, Education Professional Standards Board; Beau Barnes, Teachers' Retirement System; Carrie Bass, Jessica Beaubien, D'Juan Suratt, Kentucky Public Pensions Authority; Kelly Jenkins, Jeffrey Prather, Board of Nursing; Sam Thorner, Kentucky Housing Corporation; Tony Hatton, Michael Kennedy, Division for Air Quality; Allison Brown, Nathan Goens, Dr. Russell Williams, Department of Corrections; Andy Casebier, Katie George, Kentucky Community and Technical College System; Shaun Orme, Beth Taylor, Department of Insurance; Daniel Bell, Kristin Breeden, Julie Brooks, Andrea Day, Sam Flynn, Shelby Lewis, Scotty McFarlan, Rachel Ratliff, Jonathan Scott, Cabinet for Health and Family Services; Adam Goebel, Stoll Keenon Ogden, PLLC, on behalf of Kentucky Distillers' Association; Eric Gregory, Kentucky Distillers' Association; Rachel Nally, Jessica Pendergrass, Heaven Hill Brands; Jeff Edwards, Kevin Sharkey, Kentucky Division of Protection and Advocacy; James Higdon, Cornbread Hemp; Shannon Stiglitz, Kentucky Retail Federation; Marc Wilson, Top Shelf Lobby on behalf of Mountain Comprehensive Care; and Steve Shannon, Association of Community Mental Health Centers.

The subcommittee determined that the following administrative regulations were deficient pursuant to KRS 13A.030(2)(a):

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services

[907 KAR 001:044](#). Coverage provisions and requirements regarding community mental health center behavioral health services. Jonathan Scott, chief legislative and regulatory officer, represented the department. Steve Shannon, Association of Community Mental Health Centers, appeared in support of these administrative

regulations. Marc Wilson, Top Shelf Lobby on behalf of Mountain Comprehensive Care, appeared in opposition to these administrative regulations.

In response to a question by Co-Chair Lewis, Mr. Wilson stated the administrative regulations, if implemented, could cause a 25 percent contraction of Mountain Comprehensive Care's workforce. Many employees would not have the funds necessary to pay for these increased college coursework requirements, resulting in less access to mental health care, especially in rural areas. Mr. Wilson requested the administrative regulations be found deficient.

In response to a question by Co-Chair Lewis, Mr. Scott stated the department was willing to defer consideration of these administrative regulations to the November subcommittee meeting in order to meet with stakeholders about concerns and potentially make further amendments. Behavioral health associates are currently required to have a bachelor's degree; however, it is important to consider that non-Medicaid health care consumers receive care from providers with more advanced degrees, who are under the additional jurisdiction of applicable licensure boards. Medicaid recipients deserve the same level of care as other Kentuckians.

In response to a question by Co-Chair West, Mr. Scott stated there are varied levels of services that different types of providers could provide, including services delivered by paraprofessionals and practitioners-under-supervision. It would be possible for those practitioners with bachelor's degrees, but without the new college coursework requirements, to continue as providers within a different category of care. Allowing noncredentialed providers to behave as licensed professionals is a serious concern.

Senator Yates stated these programs and providers are vital to communities. It is important to work together to find a solution for access to quality care with appropriate oversight and without losing a provider workforce. Kentucky needs a well-trained provider workforce, but not at the expense of having no care at all. The department should be able to develop a balance.

In response to questions by Representative Bridges, Mr. Scott stated the department was in the process of aligning behavioral health services provider requirements with those of community mental health center providers. Mr. Shannon stated that, in the mid-1980s to mid-1990s with a lack of graduate programs, there were not enough providers; therefore, the behavioral health associate category was created. Over time, a rigorous framework of provider criteria was established for this category. Mr. Scott stated some practitioners had been pressed into service immediately, treating patients with severe mental illnesses, which led to negative outcomes. The department believes the administrative regulations will not lead to a provider shortage. Mr. Wilson stated the risk of losing providers seems to exceed the possible benefits.

In response to a question by Senator Raque Adams, Mr. Scott stated this situation is somewhat different than the social workers' circumstances, whose standards reverted to bachelor's degrees after more rigorous requirements resulted in shortages, because those

social work providers were also under board jurisdiction to ensure standards. Behavioral health associates are typically not under the jurisdiction of licensure boards. A related concern is that some boards might seek action against these providers for violations, such as practicing without a license or not meeting educational criteria.

In response to a question by Co-Chair Lewis, Mr. Scott agreed to defer consideration of the administrative regulations to the November meeting of this subcommittee.

Co-Chair Lewis made a motion, seconded by Senator Thayer, to find the administrative regulations deficient. A roll call vote was conducted, and with five votes to find the administrative regulations deficient, two votes against deficiency, and one abstention, the administrative regulations were found deficient.

Co-Chair West explained his pass vote was out of an abundance of caution related to a possible conflict of interest.

A motion was made and seconded to defer consideration of the administrative regulations to the November meeting of this subcommittee. Without objection, and with agreement of the agency, the administrative regulations were deferred.

Compiler's Note: Pursuant to KRS 13A.335(3)(a), a new Section 14 was added to this administrative regulation to reflect the finding of deficiency.

Behavioral Health

[907 KAR 015:005](#). Definitions for 907 KAR Chapter 015.

Compiler's Note: Pursuant to KRS 13A.335(3)(a), a new Section 2 was added to this administrative regulation to reflect the finding of deficiency.

Administrative Regulations Reviewed by this subcommittee:

EDUCATION AND LABOR CABINET: Education Professional Standards Board: General Administration

[016 KAR 001:030](#). Procedures for educator certificate surrender, revocation, suspension, reinstatement, and reissuance, and for application denial. Cassie Trueblood, counsel, represented the board.

Teaching Certificates

[016 KAR 002:030](#). Substitute teachers.

Alternative Routes to Certification

[016 KAR 009:010](#). Provisional and professional certificate for exceptional work experience.

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

[016 KAR 009:080](#). University-based alternative certification program.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 3 and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[016 KAR 009:100](#). Alternative Route to Certification Institute.

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

TEACHERS' RETIREMENT SYSTEM: General Rules

[102 KAR 001:138](#). Crediting of interest for TRS 4 members. Beau Barnes, deputy secretary and general counsel, represented the system.

[102 KAR 001:350](#). Full actuarial cost purchase.

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

[102 KAR 001:370](#). Annuitization and disbursement from supplemental benefit.

A motion was made and seconded to approve the following amendment: to amend Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with approval of the agency, the amendment was approved.

KENTUCKY PUBLIC PENSIONS AUTHORITY: General Rules

[105 KAR 001:140](#). Employer's administrative duties. Carrie Bass, staff attorney supervisor; Jessica Beaubien, policy specialist; and D'Juan Surrat, division director, represented the authority.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 3, 4, 8 through 10, 14, and 15 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Sections 10 and 15 for clarity. Without objection, and with agreement of the agency, the amendments were approved.

[105 KAR 001:142](#). Limitations and exclusions on creditable compensation in the last five fiscal years of service.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 3 and 4 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Sections 3 for clarity; and (3) to amend Section 7 to update incorporated material. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Nursing

[201 KAR 020:056](#). Advanced practice registered nurse licensure and certification requirements. Kelly Jenkins, executive director, and Jeffrey Prather, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 5, 8, and 13 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[201 KAR 020:215](#). Continuing competency requirements.

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

[201 KAR 020:230](#). Renewal of licenses.

[201 KAR 020:390](#). Nursing Incentive Scholarship Fund.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 7, and 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.

KENTUCKY HOUSING CORPORATION

[202 KAR 002:020E](#). Rural Housing Trust Fund. Sam Thorner, general counsel, represented the corporation.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

[501 KAR 006:021](#). Repeal of 501 KAR 006:020. Allison Brown, assistant general counsel; Nathan Goens, staff attorney; and Dr. Russell Williams, director of mental health, represented the department. Jeff Edwards, division director, and Kevin Sharkey, staff attorney, Kentucky Division of Protection and Advocacy, appeared in opposition to 501 KAR 6:340, 6:380, and 6:400.

[501 KAR 006:280](#). Risk and needs assessment.

[501 KAR 006:300](#). News media.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 2, 6, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:310](#). Monitoring and operation of private prisons.

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

[501 KAR 006:320](#). Corrections policies and procedures: inmate funds.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update edition dates; and (3) add fields for the previous effective dates. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:340](#). Corrections policies and procedures: research and information.

In response to a question by Co-Chair Lewis, Mr. Sharkey stated Corrections Policies and Procedures (CPP) 5.1 was previously amended to allow inmate medical research. At that time, Kentucky Division of Protection and Advocacy submitted concerns that the inherently coercive environment of incarceration, in concert with mental illness, intellectual disabilities, and traumatic brain injury, made it difficult to ensure that participation in medical research was truly voluntary. As a result of these concerns, the department added a requirement that, prior to inclusion in a medical research study, a person suspected of having diminished capacity shall be screened to ensure informed, voluntary consent. The proposed amendment to this CPP removes that requirement; therefore, this administrative regulation should be found deficient.

In response to questions by Co-Chair West, Mr. Sharkey stated the Kentucky Division of Protection and Advocacy was concerned about the removal of screening to ensure that individuals with diminished capacity were not coerced into participating in medical research studies. That requirement should be added back into CPP 5.1.

In response to questions by Co-Chair West, Mr. Goens stated CPP 5.1. required approval by a review board and compliance with federal standards for effective informed consent, which included considerations for diminished capacity. It was rare that the department received medical research study requests, three since 2019, with those studies being more sociological than medical. While there were redundant protections in place,

the previous language failed to provide opportunities for those in jails or community placement. Dr. Williams stated there are layers of evaluation in place to receive approval for participation in medical research studies.

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

[501 KAR 006:350](#). Inmate or offender or supervision record request.

[501 KAR 006:360](#). Corrections policies and procedures: safety and critical incident notification.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update an edition date; (3) correct a statutory cross-reference citation; and (4) add a field for the previous effective date. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:370](#). Corrections policies and procedures: security and control.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update edition dates; and (3) add fields for the previous effective dates. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:380](#). Corrections policies and procedures: special management and restrictive housing inmates, safekeepers, and contract prisoners.

In response to a question by Co-Chair Lewis, Mr. Sharkey stated CPP 10.2 should be amended to exclude inmates with serious mental illness from being placed in extended restrictive housing. Decades of research demonstrate that prolonged isolation for individuals with serious mental illness could cause serious detrimental mental health outcomes, including hallucination, psychosis, psychological trauma, anxiety, paranoia, depression, self-harm, and increased risk of suicide. Forty-two states have established laws restricting prolonged isolation for individuals with serious mental illness. Several court cases held that prolonged isolation of individuals with mental illness violated the Eighth Amendment to the United States Constitution.

In response to a question by Co-Chair Lewis, Mr. Goens stated CPP 10.2 required inmates with a "serious mental illness", as defined by CPP 13.13, to not be placed in extended restrictive housing unless a multidisciplinary service team determined it to be necessary due to an immediate and present danger to others in the institution. Dr. Williams stated that, based on staff notification of concerns, any inmate could be

evaluated related to problems resulting from extended restrictive housing. Mental health staff were required to assess extended restrictive housing at least every seven days, including observing inmates. The least restrictive environment necessary was selected for those with serious mental illness.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update edition dates; and (3) add fields for the previous effective dates. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:390](#). Corrections policies and procedures: inmate diet.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update the edition date; and (3) add a field for the previous effective date. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:400](#). Corrections policies and procedures: inmate health care.

In response to a question by Co-Chair Lewis, Mr. Sharkey stated this administrative regulation should be deferred to the November meeting in order for the Kentucky Division of Protection and Advocacy to meet further with the department regarding CPP 13.13, which defines "serious mental illness." The definition established in CPP 13.13 is too narrow and fails to include some individuals with serious mental illness. Department statistics reporting serious mental illness does not align with national averages. Consequences of this incomplete definition for "serious mental illness" could result in a lack of appropriate treatment and resulting outcomes such as exacerbation of symptoms, self-harm, suicide, and difficulty integrating into society after release. The department could face avoidable disciplinary problems, resulting in solitary confinement and recidivism. The Kentucky Division of Protection and Advocacy prefers the American Correctional Association's definition for "serious mental illness."

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update edition dates; (3) correct a statutory cross-reference citation; and (4) add fields for the previous effective dates. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:420](#). Corrections policies and procedures: inmate rules and discipline.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update edition dates; and (3) add fields for the previous effective dates. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:430](#). Corrections policies and procedures: communication, mail, and visiting.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update edition dates; and (3) add fields for the previous effective dates. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:440](#). Corrections policies and procedures: inmate reception, orientation, and personal property.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update edition dates; and (3) add fields for the previous effective dates. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:450](#). Corrections policies and procedures: classification.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update edition dates; (3) correct a statutory cross-reference citation; and (4) add fields for the previous effective dates. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:460](#). Corrections policies and procedures: inmate work programs.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update edition dates; and (3) add fields for the previous effective dates. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:470](#). Corrections policies and procedures: inmate education and training.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update the edition date; and (3) add a field for the previous effective date. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:480](#). Library services.

[501 KAR 006:490](#). Corrections policies and procedures: inmate recreation and activities.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update edition dates; and (3) add fields for the previous effective dates. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:500](#). Religious programs.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:510](#). Corrections policies and procedures: release preparation and temporary release.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update edition dates; and (3) add fields for the previous effective dates. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:520](#). Citizen involvement, volunteer, and reentry mentor service programs.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Section 14 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:530](#). Corrections policies and procedures: programs and sentence credits.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update edition dates; and (3) add fields for the previous effective dates. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:540](#). Inmate record.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Board of Regents

[739 KAR 001:060](#). Management of capital construction projects. Andy Casebier, assistant vice president, Facilities and Support Services, and Katie George, staff attorney, represented the board.

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

[739 KAR 001:070](#). Contracting for capital construction projects.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 for consistency with 739 KAR 1:060; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Health Insurance Contracts

[806 KAR 017:570](#). Minimum standards for Medicare supplement insurance policies and certificates. Shaun Orme, executive advisor, and Beth Taylor, staff attorney, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 4 through 17, 19 through 22, 26, and 27 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 13 to clarify: (a) that insurers shall comply with health status discrimination protections for non-age eligible persons; and (b) criteria for initial open enrollment applicants. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Food and Cosmetics

[902 KAR 045:001E](#). Definitions for hemp-derived cannabinoid products. Daniel Bell, assistant division director, represented the department. James Higdon, co-founder, Cornbread Hemp, and Shannon Stiglitz, senior vice-president of government affairs, Kentucky Retail Federation, appeared in opposition to these administrative regulations.

In response to a question by Co-Chair Lewis, Mr. Higdon stated the industry was being doubly regulated at the processing level of the supply chain. Recently, the industry was prohibited from shipping extract between and among licensees, which was burdensome. Background check requirements are outdated and more rigorous than for the Kentucky Medical Cannabis Program.

In response to a question by Co-Chair Lewis, Ms. Brooks stated the department did not require background checks for this program; that was probably an agriculture-related requirement, as was the issue of shipping of extracts between or among licensees.

[902 KAR 045:001](#). Definitions for hemp-derived cannabinoid products.

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

[902 KAR 045:012E](#). Hemp-derived cannabinoid product retail and food service establishment requirements.

[902 KAR 045:021E](#). Hemp-derived cannabinoid products registration, processing, manufacturing, storage and distribution requirements.

[902 KAR 045:021](#). Hemp-derived cannabinoid products registration, processing, manufacturing, storage and distribution requirements.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[902 KAR 045:031E](#). Hemp-derived cannabinoid product sampling and testing requirements.

[902 KAR 045:031](#). Hemp-derived cannabinoid product sampling and tasting requirements.

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

Office of the Secretary: Medicinal Cannabis Program

[915 KAR 001:010](#). Initial and renewal application for cannabis business licenses. Sam Flynn, executive director; Shelby Lewis, executive policy advisor; and Oran McFarlan, deputy executive director, represented the office.

In response to questions by Co-Chair West, Mr. Flynn stated there were two types of fees for cannabis businesses in Kentucky, including a nonrefundable application fee and a license fee. A license holder would apply for renewal yearly to retain a license. The renewal fee is nonrefundable. Because initial applications are more numerous than what would be expected for future renewals, it is possible that additional funds would eventually be necessary to continue implementation of the program.

In response to questions by Senator Yates, Mr. Flynn stated the office had received 4,998 applications. Of those, 4,075 were applications for dispensaries, and 923 were

applications for cultivators, processors, or safety compliance facilities. Receipts for nonrefundable applications totaled \$27.7 million, which was sufficient to offset program costs.

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

[915 KAR 001:020](#). Cannabis business licenses.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 10, 12, 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.

Department for Community Based Services: Child Welfare

[922 KAR 001:350](#). Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers. Kristin Breeden, branch manager; Andrea Day, division director; and Rachel Ratliff, staff assistant, represented the department.

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

Daycare

[922 KAR 002:160](#). Child Care Assistance Program.

The following administrative regulations were deferred or removed from the October 15, 2024, subcommittee agenda:

COUNCIL ON POSTSECONDARY EDUCATION: Public Educational Institutions

[013 KAR 002:120](#). Comprehensive funding model for the allocation of state general fund appropriations to public universities.

[013 KAR 002:130](#). Comprehensive funding model for the allocation of state general fund appropriations to the Kentucky Community and Technical College System institutions.

Kentucky Public Pensions Authority: General Rules

[105 KAR 001:451](#). Quasi-governmental employer reports on independent contractors and leased employees.

BOARDS AND COMMISSIONS: Board of Pharmacy

[201 KAR 002:030](#). License transfer and Non-resident Pharmacist License.

[201 KAR 002:050](#). License and permits; fees.

[201 KAR 002:210](#). Patient records, drug regimen review, patient counseling, and final product verification.

[201 KAR 002:370](#). Pharmacy services in a long-term care facility (LTCF).

[201 KAR 002:465](#). Non-Resident Pharmacy Applications and Waivers.

[201 KAR 002:480](#). Telework and electronic supervision for remote prescription processing.

Board of Licensure for Professional Engineers and Land Surveyors

[201 KAR 018:010](#). Classes of applicants.

[201 KAR 018:030](#). In training certificates.

[201 KAR 018:192](#). Continuing professional development for professional land surveyors.

[201 KAR 018:196](#). Continuing professional development for professional engineers.

Board of Interpreters for the Deaf and Hard of Hearing

[201 KAR 039:001](#). Definitions for 201 KAR Chapter 39.

[201 KAR 039:030](#). Application; qualifications for full licensure; and certification levels.

[201 KAR 039:040](#). Fees.

[201 KAR 039:050](#). Renewal and reinstatement of full licenses.

[201 KAR 039:060](#). Reinstatement of full license subject to disciplinary action.

[201 KAR 039:070](#). Application and qualifications for temporary licensure and extensions.

[201 KAR 039:075](#). Supervision.

[201 KAR 039:090](#). Continuing education unit requirements.

[201 KAR 039:100](#). Complaint procedure.

[201 KAR 039:120](#). Code of ethics.

[201 KAR 039:130](#). Registration for nonresident interpreters.

**ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection:
Division for Air Quality - General Administrative Procedures**

[401 KAR 050:038](#). Air emissions fee. Tony Hatton, commissioner, and Michael Kennedy, division director, represented the division. Adam Goebel, attorney, Stoll Keenon Ogden, PLLC, on behalf of Kentucky Distillers' Association (KDA); Eric Gregory, president, KDA; Rachel Nally, director of environment sustainability, and Jessica Pendergrass, counsel and chief compliance officer (and chair of KDA Board), Heaven Hill Brands, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair Lewis, Mr. Gregory stated KDA represents over 70 distillers, employing more than 23,000 employees throughout the state. Some distillers began receiving excessive and unexpected air emissions invoices from the division. A stand-alone barrel warehouse without a generator was exempt from air emissions requirements; however, the same warehouse with an emergency generator for fire prevention and safety incurs fees for all emissions, including those unrelated to the generator itself. For example, ethanol emissions (angel's share emissions) from the barrels would be included in the fee calculation. While the division's efforts to address this issue have been appreciated, this administrative regulation does not go far enough and makes arbitrary distinctions between generators for fire suppression and other emergency generators for fire prevention and safety. This administrative regulation is not compliant with federal standards, is more stringent than federal standards, authorizes exorbitant and inequitable fees, puts Kentucky distillers at a competitive disadvantage, and should be found deficient.

In response to a question by Co-Chair Lewis, Mr. Goebel stated emergency generators for fire protection and safety are required for fire code compliance and to protect distillers from liability, as well as to protect employees and the public. In its Statement of Consideration, the division seemed to disregard KDA's concerns pertaining to the arbitrariness of the administrative regulation's distinction between an emergency fire-suppression generator, which is exempted, and an emergency generator for fire prevention and safety. Emergency generators, as established by U.S. EPA, operate for less than 100 hours per year, regardless of the purpose of the generator's function for fire suppression or fire prevention and safety. Emissions fees are assessed solely on the presence of an emergency generator for fire prevention and safety, not on matters related to the operation of the generator. This administrative regulation should be found deficient

because it imposes an undue burden on small businesses in the form of a penalty for installing an emergency generator for fire prevention and safety.

In response to a question by Co-Chair Lewis, Ms. Pendergrass introduced Ms. Nally, who stated that, after a 2020 permit modification, Heaven Hill Brands received an invoice for \$525,000 in air emissions fees from the division. The following year, Heaven Hill Brands received a similar invoice for \$569,000 and anticipated an upcoming invoice for \$783,000 due to increased production. Heaven Hill Brands' emergency generators for fire prevention and safety operated less than one hour per month, and the generator at the bottling facility protected the facility from dangerous accumulation of flammable vapors and provided safety measures for employees. The presence of the emergency generator for fire prevention and safety at the bottling facility resulted in Heaven Hill Brands' barrel warehouse sites being assessed for angel's share emissions fees. On average, exempted emergency fire-suppression generators at Heaven Hill Brands operated twice as long as emergency generators for fire prevention and safety. This administrative regulation should be found deficient.

In response to a question by Co-Chair Lewis, Mr. Hatton stated the division was striving to lower per-ton air emissions fees from \$142 per ton to approximately \$116 per ton. Many other states assess a combination of permit and emissions fees. Kentucky considered that model but realized that doing so would impact small businesses that lacked association representation. Instead, the division opted to remove the 4,000-ton cap, exempt emergency fire-suppression generators, and provide for disaggregation of permits for noncontiguous areas. If Heaven Hill Brands modified its permit through disaggregation, it would significantly reduce its assessed emissions fees. Exempting all emergency generators would create a budget shortfall, resulting in an increased proposed per-ton emissions fees from approximately \$116 per ton to \$121 per ton. There might be confusion, and the issue of the distinction between the two different types of emergency generators was currently the topic of an ongoing administrative hearing.

In response to questions by Senator Thayer, Mr. Hatton stated the division respectfully declined to defer consideration of this administrative regulation to the November meeting. This administrative regulation would significantly reduce fees for most permit holders, including distillers. Senator Thayer stated this administrative regulation seemed to penalize permit holders, which represent a growing Kentucky industry, for taking appropriate safety precautions. This administrative regulation violated Kentucky statute because it was more stringent than federal requirements. Senator Thayer made a motion that this administrative regulation be found deficient.

In response to questions by Co-Chair Lewis, Mr. Hatton stated, if the proposed amendment to this administrative regulation was removed as part of a deficiency, the per-ton emissions fee would continue at the current, higher rate of \$142 per-ton, resulting in continued high fees for many distillers.

In response to questions by Co-Chair West, Mr. Hatton stated the division anticipated this program costing approximately \$19 million for the upcoming year. The budgetary need remained the same, regardless of changes to the fee structure. Because of the removal of the 4,000-ton cap, many utilities would be impacted by this proposed administrative regulation, including significant increases for some utilities. Those increases were grounds for increased rates for the utility customers. A smaller number of utilities would see a decrease in emissions fees after transitioning from coal-fired electric generation to natural gas because natural gas power generation resulted in reduced air emissions in comparison to coal-fired electric generation. Emissions rates are based on the volume of emissions, not necessarily implementation costs for the division. The primary air emissions from distillers consists of volatile organic compounds, typically ethanol. Emissions from distillers were under federal Clean Air Act requirements.

In response to questions by Co-Chair Lewis, Ms. Pendergrass stated many distillers, not just Heaven Hill Brands, are incurring high air emissions fees for emergency generators for fire prevention and safety. Kentucky distillers are paying approximately 24 percent, \$5 million, of the division's yearly operating budget. Mr. Goebel stated there might be a compromise in which all emergency generators were consistently exempted, which would change the proposed per-ton fee from \$116 to \$121, which was only a five dollar difference; therefore, the division could still significantly lower the \$142 per-ton fee and remove the arbitrary distinction between emergency generators for fire prevention and safety and emergency fire-suppression generators, which were exempted in this proposed administrative regulation.

Senator Yates stated deferral would provide an opportunity for possible compromise, in lieu of a possible finding of deficiency.

In response to questions by Co-Chair West, Mr. Hatton stated the proposed compromise would seem to remedy the contention. Senator Thayer agreed to withdraw his motion to find this administrative regulation deficient if the division agreed to defer. Mr. Hatton agreed to defer consideration of this administrative regulation to the November meeting in order to meet further with stakeholders to consider a compromise with the understanding that the proposed compromise would affect other permit holders in the form of higher air emissions rates than the proposed \$116 per ton. Senator Thayer withdrew the motion to find this administrative regulation deficient.

Without objection, and with agreement of the agency, this administrative regulation was deferred.

JUSTICE AND PUBLIC SAFETY CABINET: Parole Board

[501 KAR 001:080](#). Parole board policies and procedures.

Office of the Secretary

[501 KAR 006:410](#). Corrections policies and procedures: inmate life and issues.

PUBLIC PROTECTION CABINET: Department of Financial Institutions: Division of Depository Institutions: Credit Unions

[808 KAR 003:050](#). Conduct of credit unions.

General

[808 KAR 015:050](#). Out-of-state trust companies operating in Kentucky.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Sanitation

[902 KAR 010:120](#). Kentucky public swimming and bathing facility operations.

[902 KAR 010:122](#). Repeal of 902 KAR 010:121 and 902 KAR 010:190.

[902 KAR 010:123](#). Kentucky public swimming and bathing facilities construction requirements.

[902 KAR 010:125](#). Kentucky public swimming and bathing facility safety requirements.

[902 KAR 010:127](#). Kentucky public beach requirements.

Division of Maternal and Child Health: Kentucky Early Intervention System

[902 KAR 030:200](#). Coverage and payment for services.

Food and Cosmetics

[902 KAR 045:012](#). Hemp-derived cannabinoid product retail and food service establishment requirements. Daniel Bell, assistant division director, represented the department. James Higdon, co-founder, Cornbread Hemp, and Shannon Stiglitz, Kentucky Retail Federation, appeared in opposition to these administrative regulations.

In response to a question by Co-Chair Lewis, Mr. Higdon stated 902 KAR 45:012 changed "adult-use cannabinoid products" to "all cannabinoid products", which seemed to exceed the department's statutory scope.

In response to a question by Co-Chair Lewis, Ms. Stiglitz stated the Kentucky Retail Federation is also concerned about the change from "adult-use cannabinoid products" to "all cannabinoid products." Additionally, the \$2,000 per-location fee is overburdensome. There are concerns about retailers registering products, which might be a conflict with 902 KAR 45:021. Kentucky Retail Federation requested that the department defer consideration of this administrative regulation to the November meeting.

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

In response to a question by Co-Chair Lewis, Ms. Brooks stated the department agreed to defer this administrative regulation. A motion was made and seconded to defer consideration of this administrative regulation to the November meeting. Without objection, and with agreement of the agency, this administrative regulation was deferred.

Department for Medicaid Services

[907 KAR 001:044](#). Coverage provisions and requirements regarding community mental health center behavioral health services. *For a summary of the discussion on this administrative regulation, please see the deficiency portion of these minutes.*

Behavioral Health

[907 KAR 015:005](#). Definitions for 907 KAR Chapter 015. *For a summary of the discussion on this administrative regulation, please see the deficiency portion of these minutes.*

Department for Community Based Services: Child Welfare

[922 KAR 001:050](#). State funded adoption assistance.

[922 KAR 001:060](#). Federal Title IV-E adoption assistance.

[922 KAR 001:490](#). Background checks for foster and adoptive parents and relative and fictive kin caregivers.

Daycare

[922 KAR 002:090](#). Child-care center licensure.

[922 KAR 002:120](#). Child-care center health safety standards.

The subcommittee adjourned at 3:20 PM. The next meeting of this subcommittee was tentatively scheduled for November 13, 2024, at 1:00 PM in Room 149 of the Annex.