

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of April 14, 2025

Call to Order and Roll Call

The April meeting of the Administrative Regulation Review Subcommittee was held on Monday, April 14, 2025, 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; Senator Mike Wilson; and Representatives Randy Bridges and Mary Lou Marzian.

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

Guests: Mark Bowman, Department of Veterans' Affairs; Eden Davis, Board of Pharmacy; Dr. Joe Ellis, OD, Christi LeMay, Board of Optometric Examiners; Kelly Jenkins, MSN, RN, Jeff Prather, Board of Nursing; Eddie Slone, John Wood, Board of Emergency Medical Services; Dave Dreves, Steven Fields, Jenny Gilbert, Department of Fish and Wildlife Resources; Jesse Rowe, Transportation Cabinet; Joshua Newton, Maggie Woods, Department of Alcoholic Beverage Control; Dr. Leslie Hoffmann, Jonathan Scott, Melanie Taylor, Cabinet for Health and Family Services; Dr. Richard Castillo, University of North Carolina College of Optometric Medicine; Eric D'Astolfo, Pearson VUE; Lisa Fennell, Association of Regulatory Boards of Optometry; Dr. Aaron Oberster, optometrist; and Dr. Jamie Althoff, Dr. Jill Bryant, Dr. Brett Foley, Dr. Michael Ohlson, National Board of Examiners in Optometry.

Administrative Regulations Reviewed by this Subcommittee:

DEPARTMENT OF VETERANS' AFFAIRS: Tuition Waiver Program

017 KAR 001:030. Nurse Loan Repayment Program. Mark Bowman, executive director, represented the department.

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.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:416E. Pharmacy annual reporting of cost dispensing data. Eden Davis, general counsel, represented the board.

In response to Co-Chair Lewis, Ms. Davis stated, for the ordinary version of this administrative regulation, the board had filed a Statement of Consideration, which included Amended After Comments revisions to address stakeholder concerns.

Board of Optometric Examiners

201 KAR 005:010. Application for licensure; endorsement. Dr. Joe Ellis, OD, president, and Christi LeMay, executive director, represented the board. Dr. Richard Castillo, founding dean, University of North Carolina College of Optometric Medicine; Eric D'Astolfo, vice president of business development, Pearson VUE; Lisa Fennell, executive director, Association of Regulatory Boards of Optometry; Dr. Aaron Oberster, optometrist; and Dr. Jamie Althoff, assistant director, Dr. Jill Bryant, executive director, Dr. Brett Foley, director of psychometrics and research, and Dr. Michael Ohlson, president, National Board of Examiners in Optometry (NBEO), appeared in opposition to this administrative regulation.

In response to Co-Chair Lewis, Dr. Ellis stated this proposed amendment was intended to increase licensure accessibility for those who received optometric education and training outside of the United States, particularly from Canada.

In response to Co-Chair Lewis, Dr. Bryant stated the NBEO opposed this administrative regulation because substituting a Canadian exam into a series of exams developed for the US health care system would compromise the validity of the entire examination process. US and Canadian exams cover different scopes of practice and substituting Part One would put the validity of Kentucky licensure at risk.

In response to Co-Chair Lewis, Dr. Foley stated the NBEO opposed this administrative regulation because the exams were not equivalent. By making Part One of the NBEO exam optional, potential licensee candidates would not need to provide independent evidence of competence pertaining to the biomedical science principles underlying optometric practice. Replacing NBEO exams with non-equivalent exams to improve pass rates was not in Kentucky's best interests.

In response to Co-Chair Lewis, Dr. Althoff stated the NBEO and Canadian exams are not equivalent and using the exams interchangeably is not justified.

In response to Co-Chair West, Dr. Bryant stated the NBEO is willing to work with the board to continue developing this administrative regulation. NBEO had not contacted the board about concerns, and the board had not reached out to NBEO. NBEO became aware of this administrative regulation in the fall of 2024. The board had not expressed concerns to NBEO regarding the examination process.

In response to a Co-Chair Lewis, Dr. Ohlson stated practitioners of optometric medicine are required to meet specific industry training and education requirements.

Stringent test requirements maintain public trust in healthcare professionals. Biomedical science training and education are essential for understanding therapeutic interventions.

In response to Co-Chair Lewis, Ms. Fennell stated the Canadian exam does not assess biomedical science and is designed based on that country's scope of practice for optometrists. If the board adopted the Canadian exam as an additional accreditation for licensure, oversight of the content of that exam would be inadequate. Other states do not accept this alternate exam for licensure purposes, and doing so would create barriers to those wishing to practice optometric medicine in multiple states. Patient care could be negatively impacted.

In response to Co-Chair Lewis, Dr. Castillo stated since 1951, the NBEO has provided a well-established national standard that keeps optometric licensing consistent and portable across US states. US states have never accepted a foreign licensing exam as a valid substitute for initial licensing. NBEO exams are developed in accordance with jurisdictional-specific laws and public protection standards, and therefore are not interchangeable. Licensed optometric practitioners in Kentucky operate pursuant to an advanced scope of practice not currently applicable in Canada. Allowing licensure based on Canadian exams could cause problems with insurance companies, which might refuse to recognize alternate credentials and therefore deny claims.

In response to Co-Chair Lewis, Dr. Oberster stated, as a graduate from a school of optometric medicine in Kentucky, he is aware of how the NBEO examinations work in sequence to ensure optometrists have the necessary knowledge and skills to safely practice. By accepting an alternate exam as a qualification for licensure, unqualified candidates could provide substandard care to patients, especially in rural areas. Standards should be consistent across states, and licensure should be based on competence, not convenience.

In response to Co-Chair Lewis, Mr. D'Astolfo stated Pearson VUE opposed this administrative regulation because the Canadian exams are not comparable and are conducted via remote, online proctoring, while NBEO examinations are held at in-person proctored testing centers where candidates do not control the testing environment. NBEO's use of secure test centers ensures testing integrity. Nearly 12 high-stakes examination programs have discontinued remote proctored exams due to challenges around testing security.

Co-Chair Lewis asked if any of those testifying in opposition live in Kentucky. There was no response.

In response to Co-Chair Lewis, Dr. Ellis stated the board was revising this administrative regulation to better align with the authorizing statute, to ensure continued accurate assessment of clinical knowledge, and to expand access. In researching the proposed changes, the agency did not find any statistical data that showed adverse outcomes for utilizing the Canadian exam as criteria for licensure. The Accreditation Council on Optometric Education, an organization recognized by the US Department of

Education, recognized the Canadian exam as equivalent to the NBEO examination. Those in Kentucky seeking licensure using Part One of the Canadian exam would also have to pass Parts Two and Three of the NBEO exam. Other state boards have raised concerns with the NBEO exam system. While the board supported a national testing service, there were concerns about several aspects of the current examination process, including accuracy, transparency, access, and the welfare of optometry students.

In response to Co-Chair West, Ms. LeMay stated the proposed version of this administrative regulation has been publicly available since August of 2024. The board received a fact-finding phone call from Dr. Bryant, and written public comments during the public comment period. Kentucky would be the first state to include the option of using Part One of the Canadian exam as criteria for licensure. Dr. Ellis stated the examination revisions to this administrative regulation were proposed as a result of concerns about access and questions regarding the current testing system. Although not a large number, there were Canadian students seeking licensure in Kentucky who sought alternatives to repeating examination.

In response to Senator Wilson, Ms. LeMay stated the cost for a student to take Part One of the NBEO exam is approximately \$1,400. The cost to take the Canadian exam is comparable; however, students taking the Canadian exam do not incur travel expenses because that test is remotely proctored.

Co-Chair Lewis stated he has been in direct contact with several Kentucky optometrists who are in support of the proposed revisions and who have expressed frustration with the NBEO. One practitioner had been a victim of identity theft due to a NBEO data breach. Other optometrists expressed concerns with oversight at the testing agency. In 2016, the cost for Part One of the NBEO exam was \$725, while the same exam in 2024 was \$1,445. Pass rates have also declined in recent years. Co-Chair Lewis stated he trusts the providers with whom he spoke. Additionally, pursuant to KRS 320.250, the board seems to have the authority to make this change.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 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 Nursing

201 KAR 020:215. Continuing competency requirements. Kelly Jenkins, MSN, RN, executive director, and Jeff Prather, general counsel, represented the board.

INDEPENDENT ADMINISTRATIVE BODIES: Board of Emergency Medical Services

202 KAR 007:410. Advanced Practice Paramedics. Eddie Slone, executive director, and John Wood, counsel, represented the board.

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 9, 12, and 14 through 16 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

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

In response to Co-Chair Lewis, Mr. Dreves stated the Frankfort fish hatchery experienced some damage due to the recent floodwaters. Many ponds were inundated, resulting in displaced fish, which will cause sorting challenges at harvesting.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Driver's License

601 KAR 012:120. Testing applicants for initial or renewal instruction permit, initial or renewal operator's license, or reinstatement. Jesse Rowe, assistant general counsel, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 5 to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Licensing

804 KAR 004:212. In-State Distilled Spirits Supplier License. Joshua Newton, general counsel, and Maggie Woods, distilled spirits administrator, represented the department.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 3 and 4 to comply with the

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

804 KAR 004:251. Special temporary license.

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

804 KAR 004:400. Applications incorporated by reference.

804 KAR 004:410. Product registration and forms.

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

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services

907 KAR 001:595. Model Waiver II service coverage and reimbursement policies and requirements. Dr. Leslie Hoffmann, deputy commissioner, and Jonathan Scott, legislative and regulatory liaison, represented the department.

907 KAR 001:835E. Michelle P. waiver services and reimbursement.

Payments and Services

907 KAR 003:210E. Acquired brain injury long-term care waiver services and reimbursement.

Supports for Community Living Waiver

907 KAR 012:020. Reimbursement for New Supports for Community Living Waiver Services.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 2, 4, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Medicaid Eligibility

907 KAR 020:005. Medicaid technical eligibility requirements not related to a modified gross income standard or former foster care individuals.

In response to Co-Chair West, Dr. Hoffmann stated targeted services for incarcerated youth include early and periodic screenings, diagnostic and treatment services, and targeted case management. These include medical, dental, and behavioral screenings and services for assessment and referral needs thirty (30) days prior to scheduled release.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 2, 4 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.

Department for Community Based Services: Child Welfare

922 KAR 001:360E. Private child care placement, levels of care, and payment. Melanie Taylor, division director, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph; Sections 1, 5, and 18; 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.

The following administrative regulations were deferred or removed from the April 14, 2025, subcommittee agenda:

PERSONNEL CABINET: Classified

101 KAR 002:034. Classified compensation administrative regulations.

101 KAR 002:102. Classified leave general requirements.

Unclassified

101 KAR 003:015. Leave requirements for unclassified service.

101 KAR 003:045. Compensation plan and pay incentives for unclassified service.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:416. Pharmacy annual reporting of cost of dispensing data.

PUBLIC PROTECTION CABINET: Office of Claims and Appeals: Tax Appeals

802 KAR 1:010. Tax appeal procedures.

Negligence Claims

802 KAR 2:010. Negligence claims before the Board of Claims.

Crime Victims Claims

802 KAR 3:010. Crime victims compensation.

802 KAR 3:020. Payment schedule for sexual assault examinations.

802 KAR 3:030. Crime victims compensation awards.

802 KAR 3:040. Additional award requests.

802 KAR 3:050. Emergency awards.

802 KAR 3:060. Crime victim compensation offender debt collections.

Department of Alcoholic Beverage Control: Licensing

804 KAR 004:415. Direct shipper license.

Department of Insurance: Agents, Consultants, Solicitors, and Adjusters

806 KAR 009:360. Pharmacy Benefit Manager License.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services

907 KAR 001:039. Hearing program reimbursement provisions and requirements.

907 KAR 001:835. Michelle P. waiver services and reimbursement.

Payments and Services

907 KAR 003:100. Reimbursement for acquired brain injury waiver services.

907 KAR 003:210. Acquired brain injury long-term care waiver services and reimbursement.

Certified Provider Requirements

907 KAR 007:015. Reimbursement for home and community based waiver services version 2.

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

908 KAR 001:410. Recovery housing.

The subcommittee adjourned at 2:00 PM. The next meeting of this subcommittee was tentatively scheduled for May 13, 2025, at 1 PM in Room 149 of the Annex.