

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

January 8, 2009
Room 446-N—Statehouse

Members Present

Senator Vicki Schmidt, Chairperson
Representative Carl Holmes, Vice-Chairperson
Senator Karin Brownlee
Senator Ralph Ostmeyer
Senator Chris Steineger
Representative John Faber
Representative Joe Patton
Representative Jan Pauls
Representative Arlen Siegfroid
Representative Ed Trimmer

Members Absent

Senator Donald Betts
Representative Mark Treaster

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Corey Carnahan, Kansas Legislative Research Department
Kenneth Wilke, Office of the Revisor of Statutes
Nobuko Folmsbee, Office of the Revisor of Statutes
Judy Glasgow, Committee Assistant

Others Present

Brenda Kuder, Kansas Health Policy Authority
Scott Bears, Kansas Health Policy Authority
Travis Lowe, Pinegar, Smith and Associates
Ashley Dophu, Pinegar, Smith and Associates
Mary Greb-Hall, Department of Administration
Sean Miller, Capitol Strategies
Barend Koops, Hein Law Firm
Cheryl Magathan, Real Estate Appraisal Board

Walt Schoenk, Kansas Health Policy Authority
Bill Sneed, Polsinelli Law Firm
John Wine, Kansas Insurance Department
Larry Bruning, Kansas Insurance Department
Linda Sheppard, Kansas Insurance Department
Susan Ellmaker, Kansas Insurance Department
Richard Cram, Department of Revenue
Randy Forbes, Board of Pharmacy
Dave Starkey, Department of Agriculture
Dave Barfield, Department of Agriculture
Constantine Cotsoradis, Department of Agriculture
Norma Phillips, Kansas Housing Resources Corporation
Ryan Vincent, Kansas Housing Resources Corporation
Susan Somers, Kansas Board of Accountancy
Helen O'Brien, Kansas Board of Accountancy
Diane Minear, Secretary of State's Office
Ivan Weichert, Kansas Information Technology Office
Greg Reser, Kansas Department on Aging
Vera VanBruggen, Kansas Department on Aging
Janet Chubb, Secretary of State's Office
Gilbert Cruz, Kansas Ombudsman
Brian Vazquez, Kansas Health Policy Authority
Walt Schoemaker, Kansas Health Policy Authority
Dustin Moyer, Kansas Health Policy Authority

Morning Session

Chairperson Vicki Schmidt called the meeting to order at 9:00 a.m.

The Chairperson recognized Brenda Kuder to address the proposed rules and regulations noticed for hearing by the Kansas Health Policy Authority. KAR 30-5-151, revoked and KAR 129-5-151, scope of covered hospital services for MediKan program recipients.

The Committee had concerns about (b) severe acute traumatic injury, and the fact that there was no definition for this term and it could be subject to interpretation. The Committee also suggested that the agency clarify (c) by adding a definition. Ms. Peters stated that she would take these suggestions back to the agency for consideration. There being no further comments from the Committee, the Chairperson thanked Ms. Peters for her appearance before the Committee.

The Chairperson requested action on the minutes from the November 6 and 7, 2008, meeting. *Senator Steineger moved that the minutes be approved as presented, Representative Faber seconded the motion, motion passed.*

Cheryl Magathan was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Real Estate Appraisal Board. KAR 117-1-1, definitions; KAR 117-2-2a, licensed classification; experience supervision requirements; KAR 117-3-2a, general classification; experience supervision requirements; KAR 117-4-2a, residential classification; experience supervision requirements; KAR 117-5-2, provisional classification; supervised experience

requirements; KAR 117-5-2a, provisional classification; supervisor requirements; KAR 117-7-1, fees; and KAR 117-10-1, reinstatement of certificate or license to active status; continuing education.

Ms. Magathan stated that the definition of "good standing" was being added to KAR 117-1-1, the definitions and was being removed from KAR 117-2-2a, 117-3-2a; 117-4-2a and 117-5-2a.

The Committee noted that the items in KAR 117-1-1 are not in alphabetical order. Ms. Magathan stated that the Board would correct this before the public hearing. Staff suggested that in KAR 117-5-2, (c) and (f) the word should be "provisionally" in front of "licensed." Staff also suggested that in (h) it would be appropriate to refer to KAR 117-2-2 and not go into subsections and paragraphs. After answering all questions from the Committee, Ms. Magathan was thanked by the Chairperson for appearing before the Committee.

Chairperson Schmidt welcomed John Wine, Staff Attorney, to speak to the proposed rule and regulation noticed for hearing by the Kansas Insurance Department (Attachment 1). KAR 40-2-28, Pre-need insurance contracts; minimum standards for determining reserves.

Staff had some questions about the material that was adopted by reference and suggested that the agency may want to clarify subsection 5. Mr. Wine stated that the agency had discussed this, and it was to be addressed at the public hearing when agency officials would discuss how industry would like to have this handled.

Mr. Wine continued to speak to the proposed rule and regulation noticed for hearing by the Kansas Insurance Department (Attachment 2). KAR 40-4-36, accident and sickness insurance; conversion policies; reasonable notice of right to convert.

Mr. Wine stated this rule and regulation is being amended to comply with SB 81, passed by the 2008 Legislature. SB 81 now requires that employers, not insurers, provide reasonable notice to former employees and their covered dependents of their right to continuation of group accident and sickness insurance coverage.

The Committee had several questions about the change made by SB 81 and did not believe that this was the intent of the Legislature. Mr. Wine stated that the Insurance Department was not at the meeting when this amendment was added. Bill Sneed, representing the insurance industry, stated that the amendment was offered at the time of the Conference Committee and there was little discussion about what changes this would cause in the industry. The amendment was offered to bring state law into compliance with federal law. After a thorough discussion, it was the *consensus of the Committee members that a bill be prepared by staff to change the requirement back to having the insurance company provide notice to employees and to collecting the premium*. The Committee recommended that KAR 40-4-36 be withdrawn by the Insurance Department with the introduction of the new bill.

Staff noted that the history section of the proposed regulation needed to be amended to include KSA 40-3215.

After responding to all questions from the Committee, the Chairperson thanked Mr. Wine for his presentation before the Committee.

Richard Cram was introduced by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Department of Revenue. KAR 92-26-1, definitions; and KAR 92-26-4, filing of quarterly reports; deadline.

Mr. Cram stated that the agency has an incentive program for the production of ethyl alcohol in the State of Kansas. Mr. Cram stated that there are 12 ethyl alcohol producers in the state and that seven of these qualify to receive the incentive payments. Each producer is to file a report quarterly during the fiscal year and the Department has been making incentive payments quarterly based on these reports. This has resulted in payments being made on different *pro rata* bases. After consulting with the producers, the Department is proposing to amend KAR 92-26-4, to provide for payment to be calculated at the end of the year after all quarterly reports have been made.

The Committee members were concerned that KAR 92-16-4 would penalize a producer who missed sending in one quarterly report. Mr. Cram stated that the only penalty for not filing a quarterly report was not being eligible for the incentive payment. Several Committee members expressed concern that under the old regulation if they failed to file a quarterly report they were not reimbursed for that quarter but under the proposed regulation they would not be reimbursed for the entire year. The Committee recommended that they only be penalized for the quarters that they did not file a report in a timely manner. Mr. Cram stated that the agency would consider this. In response to a question from a Committee member, Mr. Cram stated that the information on total gallons produced is shared with the Department of Commerce and the Department of Agriculture.

After responding to all questions from the Committee, Mr. Cram was thanked by the Chairperson for appearing before the Committee.

Chairperson Schmidt welcomed Randy Forbes, counsel for the Board of Pharmacy, to address the proposed rule and regulation noticed for hearing by the Kansas Pharmacy Board. KAR 68-20-23, N-Benzylpiperazine included in Schedule I.

Mr. Forbes stated that the Pharmacy Board was contacted by the county attorney of Geary County indicating that its law enforcement officers had been finding N-Benzylpiperazine (BZP) on suspected drug abusers and drug users and wanted to prosecute. They requested that BZP be classified as a Schedule I under emergency procedures under KSA 65-4102(e). It was stated that the KBI also called the Pharmacy Board about BZP. The Board initiated a temporary regulation which was adopted by the Board and approved on November 6, 2008. The Board also initiated a permanent regulation at the same time. Mr. Forbes stated that a report is to be sent to the President of the Senate and the Speaker of the House notifying them of new drugs to be included in Schedule I. If legislation is initiated and passed during the 2009 Session, then this rule and regulation can be rescinded.

It was suggested by a member of the Committee that a search be conducted to find out whether the federal Drug Enforcement Agency has any other drugs that are listed as Schedule I that Kansas does not have listed. Mr. Forbes stated that he would take this back to the Board for its action. The Chairperson requested that a follow-up be made on a previous request concerning having a pharmacist in charge at indigent clinics.

The Chairperson asked Ken Wilke, Revisor of Statutes Office, to explain the bill that the Committee had requested concerning the transfer of cancer drugs (Attachment 3). Mr. Wilke stated that this bill was requested by the Committee at the November 7, 2008, meeting to allow the donation and acceptance of drug in compliance with the provisions of the cancer drug repository program and the donation and transfer of any drug in compliance with the Unused Medications Act. Mr. Forbes stated that the Board approves the bill as drafted. It was the consensus of the Committee that the bill be prefiled in the Senate.

The Chairperson thanked Mr. Forbes for appearing before the Committee.

Dave Starkey, Chief Counsel, was introduced by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Division of Water Resources, Department of Agriculture. KAR 5-3-4a, hearing before issuance of an order; KAR 5-14-3, orders; and KAR 5-14-3a, hearing procedure.

A Committee member expressed concern about KAR 5-14-3, page 3, (b), allowing the Chief Engineer's designee to issue assessment of civil penalty. The Committee felt that only the Chief Engineer should have that designation and the phrase "or the chief engineer's designee" should be stricken. Staff called attention to KAR 5-14-3a concerning the time before the prehearing needs to be further defined. Staff also noted that on page 5, (2) (B) a reference should be made to KSA 35-107 to clarify which holidays are included. A Committee member noted the fact that on page 4 (3) no time frame was given for a party to object to allowing a person to participate by telephone. It was the Committee's suggestion that a specific time be included. It was noted by a Committee member that on page 7, someone besides the presiding officer review the *ex parte* communication that may have rendered the presiding officer no longer qualified.

Mr. Starkey responded to all questions from the Committee and was thanked for his presentation by Chairperson Schmidt.

The Chairperson recognized Dave Barfield, Chief Engineer, to address the proposed rules and regulations noticed for hearing by the Division of Water Resources, Department of Agriculture. KAR 5-20-1, intensive groundwater use control area; public hearings; KAR 5-20-2, formal review of intensive groundwater use control area orders; and KAR 5-20-3, initiation of an intensive groundwater use control area within a groundwater management district by the chief engineer.

Mr. Barfield gave the Committee background information concerning these three rules and regulations and noted that there had been a bill in the 2008 Legislature, but it did not pass. These rules and regulations are taken from the Senate bill and the parties have been working to find a common ground. A Committee member questioned whether or not they had statutory authority to do this, and Mr. Barfield stated that they did have an Attorney General's opinion stating that they did have this authority.

Staff noted that when KSA 74-5-10a was passed, it was passed in the context of looking at the Chief Engineer's permanent staff, not someone hired from the outside. Staff noted that this was making policy changes from what the statute allows and it would seem that it should go before the Legislature.

It was the Committee's recommendation that the agency go forward with the public hearing on KAR 5-20-1 and KAR 5-20-2 on February 12, 2009 and that KAR 5-20-3 be withdrawn from public hearing giving time for a bill to be prepared and introduced in the 2009 Legislative Session so there could be hearings in both houses and all parties would have input. Mr. Barfield stated that they would do this to give time for the Legislature to act on the bill. It was the consensus of the Committee to have a bill prepared and filed in the House. The staff will notify the Chairpersons, Vice-Chairpersons, and Ranking Minority Members of the House Agriculture and Natural Resources Committee, Senate Natural Resources Committee, and Senate Agriculture Committee concerning the filing of this bill.

After responding to all questions from the Committee, Mr. Barfield was thanked for his presentation before the Committee.

Scott Hesse was welcomed by Chairperson Schmidt to speak to the proposed rule and regulation noticed for hearing by the Board of Healing Arts. KAR 100-69-10, license renewal; continuing education.

Mr. Hesse reviewed the rule and regulation for the Committee. There were no questions, and the Chairperson thanked Mr. Hesse for his appearance before the Committee.

Chairperson Schmidt recognized Jim Hays, Superintendent, Kansas Veterans Home, Winfield, Kansas to address the proposed rules and regulations noticed for hearing by the Kansas Commission on Veterans Affairs. KAR 97-1-1, KAR 97-1-2, KAR 97-1-3, KAR 97-1-4, KAR 97-1-5, KAR 97-2-1, KAR 97-2-2, KAR 97-2-3, KAR 97-2-4, KAR 97-2-5, KAR 97-2-6, KAR 97-2-7, KAR 97-2-8, KAR 97-3-1, KAR 97-3-2, KAR 97-3-3, KAR 97-3-4, KAR 97-3-5, KAR 97-3-6, KAR 97-3-7, KAR 97-3-8, KAR 97-3-9, Revoked; KAR 97-1-1a, definitions; KAR 97-1-2a, administrative oversight; KAR 97-1-3a, eligibility; KAR 97-1-4a, application for membership; KAR 97-1-5a, priority for admission; KAR 97-1-6a, approval or denial of application, notification to applicant, and right of reconsideration; right of hearing; final decision; KAR 97-2-1a, charges; KAR 97-2-2a, comfort money; KAR 97-3-2a, personal conduct; guests; KAR 97-3-2a, pets and service or therapeutic animals; hunting prohibition; KAR 97-3-3a, passes; and KAR 97-4-1a, disciplinary actions; discharge.

Mr. Hays reviewed the rules and regulations for the Committee, stating that these all deal with the two veterans homes in Kansas. In KAR 97-1-1, the Committee had a question on page 2 (2) as to whether the terms "pistol" and "revolver" were needed since it stated "any firearm," which would cover both terms. Staff noted that on page 2, line 4 and line 10, the apostrophe is not needed in "veterans." Staff called attention to KAR 97-1-3a, page 2, that the Alcoholism and Intoxication Treatment Act has been changed to the Alcohol or Other Drug Addiction Treatment Act and the statute would be KSA 65-4024d. Staff noted a typing error in KAR 97-1-5a, the history section should read "KSA 76-1908 and 76-1954." In KAR 97-1-6a, paragraph (3) staff called attention to the time frame of at least ten calendar days before the hearing and noted that if the agency wanted this to include Saturday and Sunday, it would have to change the time frame to 11 days or more; this also would apply to KAR 97-4-1a. A Committee member suggested that "video conference" be added for potential future use. In KAR 97-3-1a, a Committee member noted that the word "state" be added in paragraph (2) before statute and regulation.

The Chairperson thanked Mr. Hays for appearing before the Committee.

Chairperson Schmidt recessed the Committee for lunch until 1:30 p.m.

Afternoon Session

Chairperson Schmidt reconvened the meeting at 1:30 p.m.

Ryan Vincent, General Counsel, was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas Housing Resources Corporation. (Attachment 4). KAR 127-2-1, definitions; KAR 127-2-2, installation standards; and KAR 127-2-3, liability insurance requirement.

Mr. Vincent reviewed the rules and regulations and answered questions raised by the Committee. Chairperson Schmidt thanked Mr. Vincent for his presentation before the Committee.

The Chairperson welcomed Janet Chubb, Assistant Secretary of State, to address the proposed rules and regulation noticed for hearing by the Secretary of State. KAR 7-41-1, definitions; KAR 7-41-2, original registration; renewal; expiration; KAR 7-41-3, registration forms; KAR 7-41-4, evidence of financial security; KAR 7-41-5, certification practice statement; KAR 7-41-6, Amendments and material changes; KAR 7-41-7, recordkeeping and retention of certification authority documents; KAR 7-41-8 and KAR 7-41-09, revoked; KAR 7-41-10, procedure upon discontinuance of certification authority business; KAR 7-41-11, recovery against financial security; KAR 7-41-12, reciprocity; KAR 7-41-13, use of subscriber information; KAR 7-41-14, state agency; compliance; KAR 7-41-15, registration authority, local registration authority, and local registration authority's trusted partner; compliance; KAR 7-41-16, registration authority, local registration authority, and local registration authority's trusted partner; general responsibilities; KAR 7-41-17, registration and authority, local registration authority, and local registration authority's trusted partner; certification; KAR 7-41-18 through 7-41-19, revoked; KAR 7-41-30, identification and authentication; certificate security levels; KAR 7-41-31, revoked; KAR 7-41-32, agreements; registration authority; local registration authority; local registration authority's trusted partner; certificate applicant; KAR 7-41-33, picture identification credentials; KAR 7-41-34, certificate; format and name; and KAR 7-41-35, certification authority; ITEC certificate policy.

Ms. Chubb stated that in KAR 7-41-1, the word "registered" was removed from "registered certification authority." Now the term is just "certification authority." The Committee expressed concern that the term "registered" was in the statute and that this was one of the requirements that the Secretary of State was to perform. Staff made the suggestion that there should be some reference to the unlawful act provision that would require certification authorities to register before engaging in business. In KAR 7-41-5, staff had a concern about (d) the term "certificate applicant" and suggested that a definition of the term should be provided. A Committee member questioned the title in KAR 7-41-6 and the fact that the term "material" is not defined. Staff had concerns about the terms "RA, LRA and LRA's trusted partner" are defined in such a way that they cover both individuals outside of state agencies, as well as those within which makes for confusion in KAR 7-41-1; this is true throughout the KAR 7-41 series. Ms. Chubb stated that this would have to be addressed before the Secretary of State went ahead with the regulation. Staff suggested that KAR 7-41-35, needs to be reorganized to make it more clear.

After discussion by the Committee, the members felt that there needed to be clarification in the statutes requiring the Secretary of State to regulate all certification authorities. A provision for unlawful acts was suggested to provide the agency with enforcement penalties. The Chairperson asked for the Committee's wishes concerning these regulations. *On a vote of 4 to 3, the Committee adopted the motion to have staff prepare a bill to be introduced in the Senate by a committee other than Administrative Rules and Regulations.* Representative Patton asked that the record show that he voted no on the measure.

In response to a question from the Committee, Ms. Chubb stated that she did not believe that the Kansas Department of Transportation (KDOT) and the University of Kansas are complying with these rules and regulations. After discussion, the Committee requested that a letter be sent to the Kansas Department of Transportation, the University of Kansas, and the Board of Regents requesting that the agencies appear at the next meeting to explain their position.

After responding to all questions from the Committee members, Chairperson Schmidt thanked Ms. Chubb for her presentation before the Committee.

Susan Somers, Executive Director, was welcomed by the Chairperson to address the proposed rules and regulations noticed for hearing by the Board of Accountancy. KAR 74-4-7, continuing professional education requirements; KAR 74-4-8, continuing professional education

programs; requirements; KAR 74-5-2, definitions; KAR 74-5-2a, definitions of terms in the AICPA professional standards; KAR 74-5-101, independence; KAR 74-5-102, integrity and objectivity; KAR 74-5-103, commissions and referral fees; KAR 74-5-201, general standards; KAR 74-5-202, compliance with standards; KAR; 74-5-301, confidential client information; KAR 74-5-302, retention of client records; KAR 74-5-401, acts discreditable; KAR 74-5-403, advertising; KAR 74-5-405a, certified public accountants who own a separate business; KAR 74-5-406, firm names; KAR 74-7-4, notification; firm registration; sole proprietors; and KAR 74-11-6, definitions.

Ms. Somers responded to all questions from the Committee. She was thanked by the Chairperson for her appearance before the Committee.

The Chairperson recognized Vera VanBruggen, Director, to speak to the rules and regulations noticed for hearing by the Kansas Department on Aging. KAR 26-39-100, definitions; KAR 26-39-101, licensure of adult care homes; KAR 26-39-102, admission, transfer, and discharge rights of residents in adult care homes; KAR 26-39-103, resident rights in adult care homes; KAR 26-39-104, receivership of adult care homes; KAR 26-39-105, adoptions by reference: general; KAR 26-39-114, 26-39-243, 26-39-278, 26-39-427, revoked; KAR 26-41-101, administration; KAR 26-41-102, staff qualifications; KAR 26-41-103, staff development; KAR 26-41-104, disaster and emergency preparedness; KAR 26-41-105, resident records; KAR 26-41-106, community governance; KAR 26-41-200, resident criteria; KAR 26-41-201, resident functional capacity screening; KAR 26-41-202, negotiated service agreement; KAR 26-41-203, general services; KAR 26-41-204, health care services; KAR 26-41-205, medication management; KAR 26-41-206, dietary services; KAR 26-41-207, infection control; KAR 26-42-101, administration; KAR 26-42-102, staff qualifications; KAR 26-42-103, reserve; KAR 26-42-104, disaster and emergency preparedness; KAR 26-42-105, resident records; KAR 26-42-106, reserve; KAR 26-42-200, resident criteria; KAR 26-42-201, resident functional capacity screening; KAR 26-42-202, negotiated service agreement; KAR 26-42-203, general services; KAR 26-42-204, health care services; KAR 46-42-205, medication management; KAR 26-42-206, dietary services; KAR 26-42-207, infection control; KAR 26-43-101, administration; KAR 26-43-102, staff qualifications; KAR 26-43-103, staff development; KAR 26-43-104, disaster and emergency preparedness; KAR 26-43-105, resident records; KAR 26-43-106, community governance; KAR 26-43-200, resident criteria; KAR 26-43-201, resident functional capacity screening; KAR 26-43-202, negotiated service agreement; KAR 26-43-203, general services; KAR 26-43-204, health care services; KAR 26-43-205, medication management; KAR 26-43-206, dietary services; `KAR 26-43-207, infection control; KAR 28-39-145a, 28-39-146, 28-39-147, 28-39-148, 28-39-240, 28-39-241, 28-39-242, 28-39-243, 28-39-244, 28-39-245, 28-39-246, 28-39-247, 28-39-248, 28-39-249, 28-39-250, 28-39-251, 28-39-252, 28-39-253, 28-39-275 Through 28-39-288, 28-39-425 through 28-39-436, revoked.

The Committee had a concern about KAR 26-39-100 and the the definition of "Physician" used which includes "licensed physician assistant or licensed advanced registered nurse practitioner." After discussion by the Committee, Ms. VanBruggen stated that the agency would change this. Staff noted in KAR 26-39-104, "secretary" needs to be defined. A Committee member had questions concerning KAR 26-41-102, page 1, (3) the term "in an adult care home" and that this was perhaps too restrictive. The Committee recommended that this be clarified. Staff noted that KAR 26-41-205, page 5, line 8, a comma is needed after KSA 65-1642. This also would be needed in KAR 26-42-205 and KAR 26-43-205.

After responding to all Committee questions, Ms. VanBruggen was thanked for her appearance before the Committee.

Raney Gilliland handed out a report to Committee members showing agency responsiveness to the Committee's comments (Attachment 5).

Committee Comments on Proposed Rules and Regulations

Kansas Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning license renewal, continuing education. After discussion, the Committee had no comment.

Kansas Department of Revenue. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; filing of quarterly reports, deadline. After discussion, the Committee had the following comments.

KAR 92-26-4. The Committee believes that those producers who fail to report should be penalized only for the quarter in which they were untimely in their reporting. In addition, the Committee believes that the Department should consider “extenuating circumstances” which could have prevented a producer from reporting on a timely basis.

Kansas Division of Water Resources, Kansas Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning:

- Hearing before issuance of an order; orders; hearing procedure
- Intensive groundwater use control area, public hearings; formal review of intensive groundwater use control area orders; and initiation of an intensive groundwater use control area within a groundwater management district by the chief engineer.

After discussion, the Committee had the following comments.

KAR 5-14-3. The Committee is concerned that the civil penalty could be imposed by a designee of the Chief Engineer, rather than by just the “Chief Engineer.”

KAR 5-14-3a. In subsection (f), the Committee believes that there should be a time frame established for those who wish to participate by telephone. In subsection (h), the Committee believes that the agency should clarify whether the ten calendar days includes Saturdays, Sundays, and holidays. Please review other proposed regulations for this same language and provide the same clarification. In subsection (j), the agency should consider some sort of time frame for the withdrawal of a pending matter when a presiding officer has received an ex parte communication. Also, please consider whether there should be a mechanism for determining whether the hearing officer should be disqualified.

KAR 5-20-3. The Committee asks the agency to withhold this regulation until July 1 in order to give the Legislature the opportunity to pass legislation to address the issue of the initiation of an intensive groundwater use control area. If the Legislature has not acted to clarify the policy, then the Committee believes the agency should proceed with the regulation. Copies of this correspondence will be sent to members of the appropriate committees of the Legislature.

Kansas Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning accident and sickness insurance, conversion policies, reasonable notice of right to convert. After discussion, the Committee had the following comment.

KAR 40-4-36. Because the Committee believes that the insurance company should be the entity required to provide notice and collect the premium, rather than the former employer, the Committee asks the agency to withdraw this regulation until legislation can be considered by the Legislature to change the law. If the agency chooses not to withdraw the regulation, then the Committee believes that KSA 40-3215 should be included as an authorizing statute for this regulation.

Kansas Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning pre-need insurance contracts; minimum standards for determining reserves. After discussion, the Committee had no comment.

Kansas Pharmacy Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning N-Benzylpiperazine included in schedule 1. After discussion, the Committee had the following comments.

KAR 68-20-23. The Committee would like to be informed if there are other drugs which have been classified as Schedule 1 by federal agencies and have not been so designated by the State of Kansas. In addition, the Committee wishes to express its disappointment with the fact that no staff from the agency was present during the time of review of this regulation and plans to distribute copies of this letter to members of the Pharmacy Board. Further, the Committee requests an update to its previous request concerning the registration of "qualifying centers or clinics." Please indicate those which have designated a "pharmacist in charge."

Kansas Health Policy Authority. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning scope of covered hospital services for MediKan program recipients; scope of covered hospital services for MediKan program recipients. After discussion, the Committee had the following comments.

KAR 129-5-151. The Committee questions why the definition of "severe acute traumatic injury" is not included in the regulation. Also, consider defining the other terms used in this regulation. The Committee also notes that this is not the term used in the statute. Perhaps clarification could be added by defining all of the terms used in this regulation. The Committee also notes that diagnosis-related groups (DRGs) are not normally contained in rules and regulations.

Kansas Real Estate Appraisal Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; licensed classification, experience supervision requirements; general classification, experience supervision requirements; residential classification, experience supervision requirements; provisional classification, supervisor requirements; provisional classification, supervisor requirements; fees; reinstatement of certificate or license to active status, continuing education. After discussion, the Committee had the following comments.

KAR 117-1-1. Please consider placing these definitions in alphabetical order.

KAR 117-5-2. In subsection (f), consider using the term “provisionally” rather than “provisional” in order to make the wording grammatically correct. In subsection (h), consider taking some of the detail out of the reference since amendments at a later date may then require this regulation to be amended in order to keep the reference correct.

Kansas Commission on Veterans Affairs. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; administrative oversight; eligibility; application for membership; priority for admission; approval or denial of application, notification to applicant, and right of reconsideration, right of hearing, final decision; charges; comfort money; personal conduct, guests; pets and service or therapeutic animals, hunting prohibition; passes; disciplinary actions, discharge. After discussion, the Committee had the following comments.

KAR 97-1-1a. In subsections (j) and (n), the apostrophes after the word “veterans” are not necessary. In addition, the Committee is not sure why the terms “pistol” and “revolver” are necessary when the term “firearm” also is used. Please review this and determine if the term “firearm” will cover all the necessary conditions.

KAR 97-1-3a. In subsection (b) please replace the names of the named acts with the appropriate names and the proper statutory citations.

KAR 97-1-5a. Please correct the statutory reference where KSA 76-1594 should be KSA 76-1954.

KAR 97-1-6a. Please clarify whether the ten calendar days include Saturdays, Sundays, and holidays. Also, consider the inclusion of video conferences.

KAR 97-3-1a. Please clarify in subsection (a) that the reference is to a “state” statute and a “state” regulation.

KAR 97-4-1a. Please clarify the ten calendar days and whether they include Saturdays, Sundays, and holidays.

Kansas Housing Resources Corporation. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; installation standards; liability insurance requirement. After discussion, the Committee had no comment.

Kansas Secretary of State. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning continuing professional education requirements; continuing professional education programs, requirements; definitions; definitions of terms in the AICPA professional standards; independence; integrity and objectivity; commissions and referral fees; general standards; compliance with standards; confidential client information; retention of client records; acts discreditable; advertising; certified public accountants who own a separate business; firm names; notification, firm registration, sole proprietors; and definitions. After discussion, the Committee had the following comments.

KAR 7-41-1. In subsection (d), the Committee believes that reference should be made to a “registered certification authority” in order to comply with the term used in the statute.

KAR 7-41-5. In subsection (d), the Committee believes that this regulation needs to be rewritten since it is unclear as to what is required.

KAR 7-41-6. Please consider developing a new title for this regulation to match the content.

KAR 7-41-7. The Committee questions the striking of the requirement for records retention and wonders if it could be made clearer by requiring that all records be kept for a certain time period rather than to be reliant on the “certificate policy.”

KAR 7-41-16. The Committee wonders whether the terms apply to all or only to those entities which have a relationship with a state agency? If the terms apply only to those entities which have a relationship with a state agency, then perhaps clarification should be made in the regulation.

KAR 7-41-30. The Committee is concerned with the “applicable requirements” and wonders if the requirements are enforceable since they are contained in a policy and not adopted as a part of a regulation.

KAR 7-41-35. The Committee believes that this regulation could be amended to make its intent clearer.

Comment. The Committee voted to introduce legislation to clarify that it is unlawful for a state agency to conduct business with a certification authority which is not registered with the Kansas Secretary of State.

Kansas Board of Accountancy. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning continuing professional education requirements; continuing professional education programs, requirements; definitions; definitions of terms in the AICPA professional standards; independence; integrity and objectivity; commissions and referral fees; general standards; compliance with standards; confidential client information; retention of client records; acts discreditable; advertising; certified public accountants who won a separate business; firm names; notification, firm registration, sole proprietors; and definitions. After discussion, the Committee had no comment.

Kansas Department on Aging. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning:

- Adult Care Homes—Definitions; licensure of adult care homes; admission, transfer, and discharge rights of residents in adult care homes; resident rights in adult care homes; receivership of adult care homes; adoptions by reference: general; and revocations
- Assisted Living Facilities and Residential Health Care Facilities—Administration; staff qualifications; staff development; disaster and emergency preparedness; resident records; community governance; resident criteria; resident functional

capacity screening; negotiated service agreement; general services; health care services; medication management; dietary services; and infection control

- Home Plus—Administration; staff qualifications; disaster and emergency preparedness; resident records; resident criteria; resident functional screening; negotiated service agreement; general services; health care services; medication management; dietary services; and infection control
- Adult Day Care Facilities—Administration; staff qualifications; staff development; disaster and emergency preparedness; resident records; community governance; resident criteria; resident functional capacity screening; negotiated service agreement; general services; health care services; medication management; dietary services; infection control and revocations

After discussion, the Committee had the following comments.

KAR 26-39-100. In subsection (ddd), the Committee believes that the definition of the term “physician” is too inclusive and needs to be modified.

KAR 26-39-101. The term “two working days” needs to be clarified as to whether it includes Saturdays, Sundays, and holidays. Please review all of the regulations in this set to determine if other similar changes need to be made.

KAR 26-39-104. The Committee believes that it would be helpful to clarify which secretary is referenced in this regulation. Please review all of the regulations in this set to determine if other similar changes need to be made.

KAR 26-41-102. In subsection (d), please review paragraph 3 to determine whether the agency would want to consider abuse in any other type of facility other than in an adult care home. Please review other similar regulations in this set to determine if similar changes need to be made.

KAR 26-41-205. Please include a comma after KSA 65-1642. Please review other regulations to determine if a similar change needs to be made.

Prepared by Judy Glasgow
Edited by Raney Gilliland

Approved by Committee on:

February 13, 2009

(Date)