

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

July 6, 2009
Room 535-N—Statehouse

Members Present

Representative Carl Holmes, Chairperson
Senator Vicki Schmidt, Vice-Chairperson
Senator Karin Brownlee
Senator Janis Lee
Senator Ralph Ostmeyer
Senator Chris Steineger
Representative John Faber
Representative Steve Huebert
Representative Shirley Palmer
Representative Joe Patton
Representative Jan Pauls
Representative Ed Trimmer

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Corey Carnahan, Kansas Legislative Research Department
Jill Shelley, 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

Chris Tymeson, Kansas Department of Wildlife and Parks
Julia Mowers, Kansas State Board of Healing Arts
Dan McLaughlin, Kansas State Fire Marshal
Dan Thompson, Kansas State Fire Marshal
Berend Koops, Hein Law Firm
Sean Miller, Capitol Strategies
Cheryl Dolejsi, Kansas Racing and Gaming Commission
Patrick Martin, Kansas Racing and Gaming Commission
John Kiefhaber, Kansas Chiropractic Association
Susan Vogel, Kansas Department of Health and Environment

Matthew Spurgin, Kansas Corporation Commission
Mike Hoeme, Kansas Corporation Commission
Gary Davenport, Kansas Corporation Commission
Jennifer Flory, Kansas Health Policy Authority
Mike Michael, Kansas Health Policy Authority
Mike Degan, Kansas Health Policy Authority
Tariq Abdullah, Kansas Health Policy Authority
Tom Day, Kansas Corporation Commission
Michael Teason, Kansas Department of Social and Rehabilitation Services
Tom Gross, Kansas Department of Health and Environment
Doug Farmer, Kansas Health Policy Authority
Kevin Glendening, State Bank Commission
Randy Forbes, Kansas Dental Board
Scott Gates, Kansas State Treasurer's Office
Deborah Hatfield, Kansas Department of Health and Environment

Morning Session

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

Chairperson Holmes welcomed Chris Tymeson, Chief Counsel, to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Wildlife and Parks: KAR 112-5-1, furbearers and coyotes; legal equipment, taking methods, and general provisions; KAR 112-5-2, furbearers and coyotes; possession, disposal, and general provisions, and KAR 115-6-1, fur dealer license; application, authority, possession of furs, records and revocation.

A Committee member suggested that in KAR 115-6-1, page 1(a)(2), and page 3(g)(2)(B), the term "physical" be inserted before "residential" to clarify the address being requested.

After Mr. Tymeson responded to questions from the Committee, Chairperson Holmes thanked Mr. Tymeson for his appearance before the Committee.

The Chairperson called Committee members' attention to the minutes of the May 18, 2009 meeting and asked for action on them. *Senator Schmidt moved that the minutes be approved as presented; Representative Huebert seconded the motion. Motion passed.*

Chairperson Holmes asked Legislative Research Department staff to update the Committee on agency responsiveness to the Committee's comments at previous hearings. Mr. Gilliland passed out letters provided by the Kansas Coalition Against Sexual and Domestic Violence (Attachments 1 and 2) and Kansas Department of Agriculture (Attachment 3) in response to questions from the Committee at the May meeting. In regard to agencies not responding to the Committee's comments, Mr. Gilliland stated that a letter requesting a response had been mailed and there are still eight agencies that have not responded. It was the consensus of the Committee that a follow-up letter to the eight agencies be prepared by the Legislative Research Department requesting a reply before the August 24 meeting. Jill Shelley will continue to keep a record of all responses by agencies. The Chairperson thanked staff for their continued effort on this matter.

Mr. Gilliland stated that a copy of the *2009 Report on Oversight Activities of the Joint Committee on Administrative Rules and Regulations* had been mailed to all members of the Committee. (Copies are available in the Legislative Research Department's office.)

Chairperson Holmes welcomed Julia Mowers to address the proposed rules and regulations noticed for hearing by the Kansas State Board of Healing Arts: KAR 100-49-4, fees; KAR 100-73-1, fees; and KAR 100-54-1, application.

Ms. Mowers stated that KAR 100-49-4 and KAR 100-73-1 have been approved as temporary rules and regulations. She noted the Board had introduced HB 2161 during the 2009 Legislative Session to increase the fees, but the bill was never enacted. In response to a question from a Committee member, Ms. Mowers stated that fee increases are allowed under current law. The increase is necessary to meet the Board's anticipated expenses. Ms. Mowers stated that a bill would be introduced in the 2010 Legislative Session to increase all fees. Staff noted in KAR 100-54-1, (a)(2) there needs to be a statement as to what information could be provided if no social security number is available. Also in KAR 100-54-1, page 2, (a)(8), it should read "KSA 65-5410 and amendments thereto."

After Ms. Mowers responded to questions from Committee members, the Chairperson thanked Ms. Mowers for her appearance before the Committee.

Patrick Martin was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas Racing and Gaming Commission: KAR 112-104-34, physical key controls; automated key controls; KAR 112-104-35, key control procedures; KAR 112-104-36, key access list; KAR 112-104-37, key log; KAR 112-104-38, broken, lost, or missing keys; KAR 112-104-39, corrections to forms; KAR 112-104-40, manual form dispensers; and KAR 112-104-41, forms; description.

Staff noted that in KAR 112-104-35, (b) a clarification is needed to accomplish the agency's intent. The Committee discussed KAR 112-104-37 and asked Mr. Martin if keys could be marked "do not duplicate" so that no locksmith would duplicate the keys. A Committee member asked if the manufacturer could make a key with a special mark to identify it as an original key. Mr. Martin stated that he would check into these suggestions. In KAR 112-104-38 staff noted that subsection (b) be clarified to read: "An inventory of duplicate keys shall be maintained; and there is always at least one duplicate key in inventory for each critical key or sensitive key." Staff noted that in KAR 112-104-40, the first noun in the third line should be singular and read "form dispenser."

Chairperson Holmes thanked Mr. Martin for appearing before the Committee.

Chairperson Holmes welcomed Matthew Spurgin, Litigation Counsel, and Mike Hoeme, Transportation Director, to speak to the proposed rules and regulations noticed for hearing by the Kansas Corporation Commission: KAR 82-4-3a, hours of service; KAR 82-4-3b, procedures for transportation workplace drug and alcohol testing programs; KAR 82-4-3c, testing for controlled substances and alcohol use; KAR 82-4-3d, safety fitness procedures; KAR 82-4-3e, revoked; KAR 82-4-3f, general motor carrier safety regulations; KAR 82-4-3g, qualifications of drivers; KAR 82-4-3h, driving of commercial motor vehicles; KAR 82-4-3i, parts and accessories necessary for safe operation; KAR 82-4-3j, inspection, repair, and maintenance; KAR 82-4-3k, transportation of hazardous materials; driving and parking rules; KAR 82-4-3l, transportation of migrant workers; KAR 82-4-3m, employee safety and health standards; and KAR 82-4-20, transportation of hazardous materials by motor vehicles.

In response to a question from a Committee member regarding intrastate travel, Mr. Spurgin stated that farm vehicles would be exempt from these rules and regulations. A Committee member questioned the use of the term “special agent” as used in KAR 82-4-3a, KAR 82-4-3f, and KAR 82-4-3j, and if it was used consistently throughout the regulations. Mr. Spurgin stated that he would check this. Staff noted that in KAR 82-4-3i, (a)(1)(C) line 2, the phrase “and amendments thereto” should be added after KSA 58-4202(a). This would ensure that future amendments would be addressed. A question was raised by a Committee member concerning who would have jurisdiction over hazardous materials on Kansas highways. Mr. Spurgin stated that he would look into this, but stated that the federal government would have jurisdiction on interstate trips.

After responding to Committee questions, Mr. Spurgin and Mr. Hoeme were thanked by the Chairperson for the presentation before the Committee.

Tom Gross, Bureau of Air and Radiation, was welcomed by Chairperson Holmes to speak to the proposed rule and regulation noticed for hearing by Kansas Department of Health and Environment: KAR 28-19-350, prevention of significant deterioration (PSD) of air quality (Attachment 4).

In KAR 28-19-350, page 3, (c)(1), staff suggested that the “administrator of the U.S. environmental protection agency” be reinserted for definition purposes and “USEPA” be placed in parentheses, allowing for the use of “USEPA” throughout the regulation. After Mr. Gross responded to questions of a general nature from Committee members, Chairperson Holmes thanked him for appearing before the Committee.

Doug Farmer, Director, State Employee Health Plan, Kansas Health Policy Authority (KHPA), was recognized by the Chairperson to address questions raised by the Committee at the April hearing concerning KAR 108-1-4, local unit of government employee health care benefit plan (Attachment 5).

Mr. Farmer responded to the four questions that the Committee had raised during the hearing in April 2009:

- The question regarding who would be considered eligible to participate in the health plan for purposes of health care coverage. Mr. Farmer stated that anyone that is eligible to participate in the health plan by virtue of their relationship to a state employee is considered to be a dependent; therefore, spouses would be covered.
- The question concerning who exactly is covered under the plan, which is consistent with federal guidelines for an eligible dependent child. The exact language also is included in KAR 108-1-1 for active employees.
- The question concerning employees of environmental protection grant programs. Mr. Farmer stated that language was changed to indicate that it is the agency or program that is paid by the state for its work that is eligible for membership, not the individuals.
- Mr. Farmer stated that the language in KAR 108-1-4, page 10, (v) is taken from the U.S. Tax Code which is what a carrier offering a cafeteria-type policy must follow (Attachment 6).

Committee members were still concerned about the language stating, "resident of Mexico and Canada" and suggested that it be changed to "while in Mexico and Canada." Mr. Farmer stated that KHPA did not have the authority to change this since it was the federal code they were following. The Committee asked if Mr. Farmer could provide a breakdown on how many claims had been paid to dependents in Mexico and Canada, and the total dollar amount. Mr. Farmer stated that he would provide the Committee with this information.

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

The Chairperson recessed the meeting until 1:30 p.m.

Afternoon Session

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

The Chairperson welcomed Dan Thompson to speak to the proposed rule and regulation noticed for hearing by the Office of the State Fire Marshal: KAR 22-24-3, adoption by reference.

Mr. Thompson stated that the change involves updating the references to the *2008 Standards of the National Fire Protection Association*, NFPA 472 and 473, thus replacing the 1997 editions. The Committee had no questions. The Chairperson thanked Mr. Thompson for his appearance before the Committee.

Chairperson Holmes welcomed Kevin Glendening, Deputy Commissioner, to speak to the proposed rules and regulations noticed for hearing by the Office of the State Bank Commissioner: KAR 17-24-2, mortgage business fees; KAR 17-24-3, prelicensing and continuing education requirements; KAR 17-24-4, record retention; KAR 17-24-5, prelicensure testing; KAR 17-24-6, bond requirements; KAR 75-6-1, making transactions outside of the scope of the Kansas uniform consumer credit code subject to same; KAR 75-6-9, additional charges; KAR 75-6-31, bond requirements; KAR 75-6-33, revoked; KAR 75-6-34, revoked; KAR 75-6-36, prelicensing and continuing education requirements; KAR 75-6-37, prelicensure testing; and KAR 75-6-38, record retention.

Mr. Glendening reviewed the proposed rules and regulations for the Committee. KAR 75-6-37 is a new regulation as a result of SB 240, which was passed in the 2009 Legislative Session. Bond requirements previously were dictated by statute, but SB 240 provides that specific requirements concerning bonds be addressed through rule and regulation. The Secure and Fair Enforcement (S.A.F.E.) Act requires that bond amounts be determined on the volume of business and KAR 75-6-31 is designed to comply with that requirement.

After Mr. Glendening answered general questions from Committee members, Chairperson Holmes thanked Mr. Glendening for his presence before the Committee.

Michael Degan was recognized by the Chairperson to speak to the rule and regulation noticed for hearing by the Kansas Health Policy Authority: KAR 129-5-78, scope of and reimbursement for home- and community-based services for persons with traumatic brain injury (TBI).

Mr. Degan responded to all Committee questions and was thanked by Chairperson Holmes for appearing before the Committee.

Randy Forbes, General Counsel, was recognized by Chairperson Holmes to speak to the proposed rules and regulations noticed for hearing by the Kansas Dental Board: KAR 71-5-1, revoked; KAR 71-5-2, revoked; KAR 71-5-3, revoked; KAR 71-5-4, revoked; KAR 71-5-5, revoked; KAR 71-5-6, revoked; KAR 71-5-7, definitions; KAR 71-5-8, applicability of regulations; KAR 71-5-9, general requirements; KAR 71-5-10, level I permit: enteral conscious sedation or combination inhalation-enteral conscious sedation; KAR 71-5-11, Level II permit: parenteral conscious sedation; KAR 71-5-12, level III permit: deep sedation and general anesthesia; and KAR 71-5-13, grounds for refusal to issue permit or for revocation, suspension, or limitation of permit.

Mr. Forbes stated that these rules and regulations had come before the Committee before and the Committee had concerns about several of the regulations. The Dental Board reviewed the Committee's concerns and several changes were made.

A question was raised as to whether a response to the Committee's questions concerning rules and regulations previously reviewed by the Committee had been drafted by the Dental Board and Board of Pharmacy. Mr. Forbes stated that he was working on the responses and should have them mailed soon. Chairperson Holmes thanked Mr. Forbes for his presentation.

Scott Gates, Chief Counsel, was welcomed by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas State Treasurer's Office: KAR 3-4-1, definitions; KAR 3-4-2, eligibility requirements; KAR 3-4-4, eligibility period; KAR 3-4-5, matching grant accounts; KAR 3-4-6, revoked; and KAR 3-4-7, forfeit of matching grant funds.

A Committee member noted that in KAR 3-4-1, the definitions should be alphabetized. Regarding the Learning Quest program, some Committee members expressed concern about not being able to transfer the deposited funds to another account without forfeiting the matching grant and paying penalties. Mr. Gates noted that in the future, only the \$600 matching grant would be lost, not the participant's investment. The Committee noted that the Economic Impact Statement should include the \$720,000 from the State General Fund which has been appropriated under the program.

After Mr. Gates responded to questions from the Committee, Chairperson Holmes thanked him for his presentation.

The Chairperson recognized Deborah Hatfield to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment (KDHE), Division of Health, Bureau of Child Care and Health Facilities: revocations of KAR 28-4-370, KAR 28-4-371, KAR 28-4-372, KAR 28-4-373, KAR 28-4-374, KAR 28-4-375, KAR 28-4-376, KAR 28-4-377, KAR 28-4-378, and KAR 28-4-379; KAR 28-4-1300, definitions; KAR 28-4-1301, applicant and licensee requirements; KAR 28-4-1302, application procedures; KAR 27-4-1303, terms of a temporary permit or a license; KAR 28-4-1304, temporary permit or license; amended license; exceptions; notification; renewal; KAR 28-4-1305, administration; KAR 28-4-1306, clinical staff member qualifications; employee schedules; training; KAR 28-4-1307, records; KAR 28-4-1308, reporting requirements; KAR 28-4-1309, quality assurance; KAR 28-4-1310, clinical services and patient care; KAR 28-4-1311, transfers; KAR 28-4-1312, health-related requirements; KAR 28-4-1313, environmental standards; KAR 28-4-1314, birth center and birthing room furnishings, equipment, and supplies; KAR 28-4-1315, maintenance; KAR 28-4-1316, safety; KAR 28-4-1317, food service; and KAR 28-4-1318, laundry.

Ms. Hatfield stated that it has taken three years to develop these rules and regulations. KAR 28-4-370 through 28-4-379, covering maternity centers, are being revoked and KAR 28-4-1300 through 28-4-1318 are being proposed for birth centers. Ms. Hatfield stated that "birth center" is the current term which is used to cover these types of centers. Staff noted that since the statute covering

these proposed rules and regulations uses the term "maternity center" for the purpose of licensing and regulating these centers, the statute probably should be revised to cover the term "birth center." Ms. Hatfield stated that the rules and regulations have been in the planning for so long KDHE would like to move forward with them if possible. The Chairperson stated that there was no reason for KDHE not to go forward with the hearing. A Committee member questioned whether these centers had a pharmacist-in-charge. The Committee member stated that they are required to make quarterly reviews to make sure there are no missing or outdated drugs. It was suggested by the Committee that Ms. Hatfield check with the Board of Pharmacy and see how many of the maternity centers were registered with that Board and to have the centers begin the process of complying with the law if they are not registered. Staff noted in KAR 28-4-1314 (4) the spelling of "dopler" should be checked. There were no further questions for Ms. Hatfield, and Chairperson Holmes thanked her for her presentation.

Chairperson Holmes asked the Committee for its views on the need for statutory changes for the KDHE rules and regulations. After discussion, *Senator Schmidt moved that a bill be prepared by staff to be introduced in the Senate that would cover the required changes; Senator Brownlee seconded the motion. Motion carried.*

The next meeting will be August 24, 2009. It was the consensus of the members that, if at all possible, it should be a one-day meeting, starting early and going late to make the best use of members' time and finances for the state. The meeting adjourned at 3:45 p.m.

Committee Comments on Proposed Rules and Regulations

Kansas Department of Wildlife and Parks. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning furbearers and coyotes, legal equipment, taking methods, and general provisions; furbearers and coyotes, possession, disposal, and general provisions; fur dealer license, application, authority, possession of furs, records, and revocation. After discussion, the Committee had the following comment.

KAR 115-6-1. Please review this and any other regulation which requires the "residential address" of the applicant for a license. Please consider the use of "physical address" since the residential address could be a post office box number which is not sufficient in order to obtain departmental licenses.

Kansas State Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning application (occupational therapists and occupational therapy assistants) and fees (podiatrists); and fees (radiologic technologists). After discussion, the Committee had the following comment.

KAR 100-54-1. Please consider the circumstances under which a non-driver identification number may be used as valid information for an application in view of the statutory references used in this regulation. Also in this regulation on page 2, there appears to be an error in the statutory citation in paragraph (8). Should not KSA 65-4410 be KSA 65-5410?

Kansas Racing and Gaming Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning physical key controls, automated key controls; key control procedures; key access list; key log; broken, lost, or missing keys; corrections to forms; manual form dispensers; and forms, description. After discussion, the Committee had the following comments.

KAR 112-104-37. Please provide the Committee with additional information with respect to the physical characteristics of sensitive and critical keys, especially with regard to such things as space to indicate “do not duplicate” and whether original keys have identifying marks.

KAR 112-104-38. In subsection (b), the Committee believes that clarity could be added to the sentence if a period were placed after the word “maintained” and a second sentence constructed for the remaining content of the original sentence.

KAR 112-104-40. In subsection (a), “dispensers” should be “dispenser.”

Kansas Corporation Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning hours of service; procedures for transportation workplace drug and alcohol testing programs; testing for controlled substances and alcohol use; safety fitness procedures; general motor carrier safety regulations; qualifications of drivers; driving of commercial motor vehicles; parts and accessories necessary for safe operation; inspection, repair, and maintenance; transportation of hazardous materials, driving and parking rules; transportation of migrant workers; employee safety and health standards; and transportation of hazardous materials by motor vehicles. After discussion, the Committee had the following comments.

KAR 82-4-3i. In subsection (a)(1)(C), the Committee recommends that after the statutory reference the agency consider inserting the words “or amendments thereto” so that if the Legislature amends this statutory section in the future the agency would not have to amend the regulation.

Comment. Please review this set of regulations to ensure that, where “special agent” is deleted and replaced, the proper language is used and that the deletions and replacements apply to the appropriate portion of the regulation.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning prevention of significant deterioration (PSD) of air quality. After discussion, the Committee had the following comment.

Suggestion. The Committee suggests the agency include a definition for “USEPA” be included or, if that term is defined elsewhere in administrative regulation, that a cross reference to that definition be made.

Kansas State Fire Marshal’s Office. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning adoption by reference. After discussion, the Committee had no comment.

Kansas State Bank Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning mortgage business fees; prelicensing and continuing education, requirements; record retention; prelicensing testing; bond requirements; making transactions outside of the scope of the Kansas uniform consumer credit code subject to same; additional charges; bond requirements; prelicensing and continuing education, requirements; prelicensure testing; record retention; and revocations. After discussion, the Committee had the following comment.

KAR 17-24-4. The Committee suggests that a reference be added to the history section in the list of the statutes being implemented. The addition would be KSA 16a-6-117, a section of the Uniform Consumer Credit Code.

Kansas Health Policy Authority. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning scope of and reimbursement for home- and community-based services for persons with traumatic brain injury. After discussion, the Committee had no comment.

Kansas State Treasurer. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; eligibility requirements; eligibility period; matching grant accounts; forfeit of matching grant funds; and revocation. After discussion, the Committee had the following comments.

KAR 3-4-1. To be consistent with other agency rules and regulations, please consider placing the definitions in alphabetical order.

Economic Impact Statement. Please include in the Economic Impact Statement a reference to the total amount appropriated for this program in the current year and the source of those moneys.

Kansas Dental Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; applicability of regulations; general requirements; Level I permit: enteral conscious sedation or combination inhalation-enteral conscious sedation; Level II permit: parenteral conscious sedation; Level III permit: deep sedation and general anesthesia; grounds for refusal to issue permit or for revocation, suspension, or limitation; and revocations. After discussion, the Committee had no comment.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning transfers (birth centers); health-related requirements; environmental standards; birth center and birthing room furnishings, equipment, and supplies; maintenance; safety; food service; laundry; administration; clinical staff member qualifications, employee schedules, training; records; reporting requirements; quality assurance clinical services and patient care; definitions; applicant and licensee requirements; application procedures; terms of a temporary permit or a license; temporary permit or license, amended license, exceptions, notification, renewal; and revocations. After discussion, the Committee had the following comments.

Concern. The Committee is concerned that these regulations address “birth centers” yet rely on statutory authority for “maternity centers,” which appears to leave the agency with promulgating rules and regulations it does not have statutory authority

to promulgate. The Committee has voted to introduce legislation to rectify this apparent conflict.

KAR 28-4-1302. This regulation references KAR 28-4-92, which refers to maternity centers, not to birth centers. KAR 28-4-92 also will need to be modified or amended in order to make the cross reference to KAR 28-4-92 appropriate.

KAR 28-4-1314. The proper spelling of “dopler” is “doppler” in paragraph (e)(4).

KAR 28-4-1316. The Committee believes that the birth centers would need to employ a pharmacist-in-charge in order to maintain the proper medication controls. Please explore the necessity of a pharmacist-in-charge by contacting the Board of Pharmacy and making appropriate modifications to these regulations.

Prepared by Judy Glasgow
Edited by Raney Gilliland

Approved by Committee on:

August 24, 2009
(Date)