

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

April 4, 2007
Room 519-S—Statehouse

Members Present

Representative Carl Holmes, Chairperson
Senator Vicki Schmidt, Vice-Chairperson
Senator Donald Betts
Senator Karin Brownlee
Senator Ralph Ostmeyer
Senator Chris Steineger
Representative John Faber
Representative Jan Pauls
Representative Arlen Siegfried
Representative Josh Svaty
Representative Mark Treaster

Members Absent

Representative Lance Kinzer

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Melissa Calderwood, Kansas Legislative Research Department
Kenneth Wilke, Revisor of Statutes' Office
Judy Glasgow, Committee Assistant
Tatiana Lin, Kansas Legislative Research Department

Others Present

Reid Stacey, Kansas Health Policy Authority
Margaret Smith, Kansas Health Policy Authority
Marta Fisher Linenberger, Kansas Health Policy Authority
Rolando Ellis, Kansas Health Policy Authority
Chris Tymeson, Kansas Department of Wildlife and Parks
Dirk Hanson, DVM, Kansas Board of Veterinary Examiners
Leslie Allen, Kansas Behavioral Science Regulatory Board
Phyllis Gilmore, Kansas Behavioral Science Regulatory Board
Allison Herring, Kansas Corporation Commission
Tom Day, Kansas Corporation Commission
Terry Brewster, Board of Examiners in the Fitting and Dispensing of Hearing Instruments

Chairperson Holmes called the meeting to order at 9:00 a.m. on April 4, 2007. The Chairperson asked for action on the Committee minutes for February 9, 2007. *Senator Vicki Schmidt moved to approve the minutes and Representative Pauls seconded the motion. Motion carried.*

Chairperson Holmes welcomed Reid Stacey, Kansas Health Policy Authority, to address the proposed rules and regulations noticed for hearing by the agency. KAR 30-5-65, revoked, and KAR 129-5-65, filing limitations for medical claims.

Mr. Stacey explained that KAR 30-5-65 was transferred from the Department of Social and Rehabilitation Services to the Kansas Health Policy Authority when the new agency was formed, and is being superceded by the new regulation, KAR 129-5-65. A Committee member had a question concerning paragraph (d) (1) and the 30 days from the date to submit a claim to the Kansas medical assistance program with 30 days from the date of Medicare's payment or denial of payment. After discussion, it was suggested that a 90-day period might be more reasonable. Mr. Stacey noted that he would take the Committee's recommendation back to the agency. After responding to all the questions, Mr. Stacey was thanked by the Chairperson for his presentation before the Committee.

Chris Tymeson, Chief Counsel, was introduced by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Wildlife and Parks. KAR 115-9-9, electronic licenses, permits, stamps, tags, and other issues of the department; other requirements.

Mr. Tymeson responded to questions of a general nature by Committee members. He continued his presentation to the Committee on exempt regulations: KAR 115-25-7, antelope; open season, bag limit, and permits; KAR 115-25-8, elk; open season, bag limit and permits and KAR 115-25-9, deer; open season, bag limit, and permits. The Committee had no questions concerning these rules and regulations. Chairperson Holmes thanked Mr. Tymeson for his appearance before the Committee.

Chairperson Holmes recognized Leslie Allen, Behavioral Sciences Regulatory Board, to address the proposed rules and regulations noticed for hearing by the Behavioral Sciences Regulatory Board. KAR 102-1-7, KAR 102-2-10, KAR 102-3-8a, KAR 102-4-8a, and KAR 102-5-8, revoked; KAR 102-6-8, registrations.

Ms. Allen explained that the revoked rules and regulations relate to the practice of returning wall certifications when the licensee is no longer licensed, and noted this procedure is no longer used. The Committee had no questions for Ms. Allen and the Chairperson thanked her for appearing before the Committee.

Dirk Hanson, DVM, was recognized by Chairperson Holmes to speak to the proposed rule and regulation noticed for hearing by the Kansas Board of Veterinary Examiners. KAR 70-5-1, amount of fees.

In response to questions from Committee members, Dr. Hanson stated that the agency is 100 percent funded by these fees and without the increase the agency will not have adequate funding in a couple of years. The amount of increase the agency would receive from raising these fees would be about \$50,000 a year. The Committee noted that no website address was given in the public notice where the proposed rules and regulations were available for viewing. After answering all questions, Dr. Hanson was thanked for his presentation before the Committee.

Allison Herring, Assistant General Counsel, was welcomed by the Chairperson to address the proposed rules and regulations noticed for hearing by the Kansas Corporation Commission.

(Attachment 1). KAR 82-3-303, determination of open flow of a gas well and KAR 82-3-304, tests of gas wells; penalty.

A general question was raised by the Committee concerning whether or not the agency would accept comments on the proposed rules and regulations by e-mail. Ms. Herring stated that the agency did not at this time, but it was working on the logistics of it and hoped it would be ready before the next set of proposed rules and regulations are published. Chairperson Holmes thanked Ms. Herring for appearing before the Committee.

The Chairperson then introduced Mark Stafford to speak to the proposed rules and regulations noticed for hearing by the Board of Healing Arts. KAR 100-22-7, orders to dispense medical devices.

Mr. Stafford stated that this was a new regulation which requires each licensee who issues an order that authorizes the sale, lease, or distribution of a prescription-only medical device to another person for other than self-treatment to create and sign a written record of the order and maintain it for at least ten years. He stated that when a physician signs the prescription for another person to use the medical device, the physician remains responsible for its use.

Staff noted that it would be helpful to have a clearer definition of "prescription-only medical device." The Committee suggested that a list of what would constitute medical devices be included for clarification. One suggestion was to note that all such prescription-only medical devices would require a printed statement on the equipment that notes the equipment is a prescribed-only device. In response to a question from staff, Mr. Stafford stated that Kansas was not the first state to propose such rules and regulations, but was trying to keep ahead of future problems. A suggestion was made on page 1, line 2 that the term "upon order of prescriber" be inserted after prescription-only medical device.

After responding to Committee members' questions of a general nature, the Chairperson thanked Mr. Stafford for his presentation before the Committee.

Larry Buening, Executive Director, was welcomed by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas State Board of Healing Arts. KAR 100-49-10, definition of human foot.

Mr. Buening stated that this proposed rule and regulation was requested by the podiatrist community. It was the suggestion of the Committee that the veins and arteries be included in the definition, since podiatrist practice would include these. Mr. Buening stated that these could be added.

Mr. Buening continued his review of proposed rules and regulations noticed for hearing by the Kansas State Board of Healing Arts. KAR 100-54-7, continuing education; license renewal; and KAR 100-54-8, continuing education; expired, canceled, and revoked licenses.

There were no questions from the Committee concerning these regulations and the Chairperson thanked Mr. Buening for his presentation before the Committee.

The Chairperson introduced Terry Brewster to speak to the proposed rules and regulations noticed for hearing by the Board of Examiners in the Fitting and Dispensing of Hearing Instruments. KAR 67-3-5, supervising sponsor; KAR 67-5-3, revoked; KAR 67-5-4, permanent license renewals and reinstatement; and KAR 67-5-5, fees.

Mr. Brewster responded to general questions from the Committee and explained that the fees had not been increased since 2000 and the increase is needed to keep the agency funded for the next three years. Staff noted that in KAR 67-3-5 (b), there may be a need for the regulation to be rephrased to help clarify the intent. Staff had a question concerning the expiration date for the license and noted that there was no mention of expiration date in the statute. Mr. Wilke will check with the Attorney General's office regarding this issue.

Chairperson Holmes stated that the next meeting would be on April 24, 2007, at 10:00 a.m. The meeting adjourned at 11:45 a.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 electronic licenses, permits, stamps, tags, and other issues of the department, other requirements; antelope, open season, bag limit, and permits (exempt); elk, open season, bag limit and permits (exempt); deer, open season, bag limit, and permits (exempt) and had no comment.

Kansas Behavioral Sciences Regulatory Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning registrations and revocations and had the following comment.

Comment. Please include in your notice information which instructs the public how to access the regulations through the Internet and also to allow comments on the regulations through e-mail.

Kansas Board of Veterinary Examiners. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning amount of fees and had the following comment.

Comment. The Committee suggests that the Board consider publication of future rules and regulations on an agency website.

Kansas Corporation Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning determination of open flow of a gas well and tests of gas wells, penalty and had no comment.

State Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning continuing education, license renewal; and continuing education, expired, canceled, and revoked licenses (Occupational Therapy); definition of human foot; and orders to dispense medical devices and had the following comments.

KAR 100-22-7. The Committee suggests the inclusion of a definition for the term "prescription-only medical device." The Committee believes that there may be a federal definition of the term which could be adopted by reference.

KAR 100-49-10. The Committee suggests that the agency consider the inclusion of the circulatory system of the foot in this regulation. In addition, the Committee wants

to express appreciation to the agency for bringing the artificial foot to help explain the regulation's intent.

Kansas Health Policy Authority. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning filing limitations for medical claims and revocation and had the following comment.

KAR 129-5-65. In subsection (d)(1), the Committee believes that the 30-day period is too short and would suggest a time frame of 90 days. The Committee also believes that the structure of the sentence in this regulation could be modified to be more clear.

Board of Examiners in the Fitting and Dispensing of Hearing Instruments. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning supervising sponsor; permanent license renewals and reinstatement; fees; and revocation and had the following comment.

KAR 67-3-5. In subsection (b), the Committee suggests that the phrase "pursuant to KSA 74-5812(d) and amendments thereto" be moved to after the word "requirement."

Prepared by Judy Glasgow
Edited by Raney Gilliland and Melissa Calderwood

Approved by Committee on:

_____ April 24, 2007