

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

July 10, 2002
Room 123-S—Statehouse

Members Present

Representative Melvin Neufeld
Senator Karin Brownlee
Senator U. L. "Rip" Gooch
Representative Carl Holmes
Representative Laura L. McClure
Representative Janice Pauls
Representative Tony Powell

Members Absent

Senator Stan Clark
Senator Chris Steineger
Senator Dwayne Umbarger
Representative Bill Light
Representative L. Candy Ruff

Staff Present

William G. Wolff, Kansas Legislative Research Department
Deb Hollon, Kansas Legislative Research Department
Ken Wilke, Revisor of Statutes Office
Judy Glasgow, Secretary

Others Present

Ralph J. Kieffer, Kansas Department of Health and Environment
Chuck Layman, Kansas Department of Health and Environment
Michael Stubblefield, Kansas Department of Health and Environment
Theresa Hodges, Kansas Department of Health and Environment
Bret Holman, Kansas Department of Health and Environment

Mike Tate, Kansas Department of Health and Environment
Craig Thompson, Kansas Department of Health and Environment
Robin Kempf, Kansas Board of Regents
Mark Stafford, Kansas Board of Healing Arts
Stuart Little, Kansas Area Agency on Aging
Elizabeth Phelps, Department of Social and Rehabilitation Services
Lori Nuebel, Department of Social and Rehabilitation Services
John House, Department of Social and Rehabilitation Services
John Badger, Department of Social and Rehabilitation Services
Sky Westerlund, Kansas National Association of Social Workers
Larrie Ann Lower, Kansas Association of Health Plans
Brad Smoot, Blue Cross Blue Shield of Kansas
Mary Blubaugh, Kansas State Board of Nursing
Patty Brown, Kansas State Board of Nursing
Janis DeBoer, Department on Aging
Christopher Tymeson, Department of Wildlife and Parks
David Wiebe, Johnson County Community Mental Health Center and the
Association of Kansas Mental Health Centers

Morning Session

The meeting was called to order by Vice Chairman Neufeld at 10:00 a.m.

Vice Chairman Neufeld welcomed Ralph Kieffer to speak to the proposed rules and regulations noticed for hearing by Kansas Department of Health and Environment, Bureau of Air and Radiation. KAR 28-19-17, prevention of significant deterioration of air quality; and 28-19-350; prevention of significant deterioration of air quality; revocation of KAR 28-19-17a, 28-19-17b, 28-19-17c, 28-19-17d, 28-19-17e, 28-19-17f, 28-19-17g, 28-19-17h, 28-19-17i, 28-19-17j, 28-19-17k, 28-19-17l, 28-19-27m, 28-19-17n, 28-19-17o, 28-19-17p, 28-19-27q.

Mr. Kieffer also spoke to the proposed rules and regulations noticed for hearing by Kansas Department of Health and Environment, Bureau of Air and Radiation. KAR 28-19-564, class II operating permits; permits-by-rule; sources with actual emissions less than 50 percent of major source thresholds.

He stated that there were three primary changes: the first revolves around federal enforceability; the second concerns the annual submission of records to demonstrate compliance; and the third requires any facility operating under the provisions of a class II operation permit covered by the proposed regulations to apply to operate under the permit within six months of the Environmental Protection Agency's (EPA) approval of the proposed regulations.

Informational questions from Committee members concerning record keeping and compliance by plants were addressed by Mr. Kieffer and Mr. Layman.

Committee staff suggested that, since the Department has consolidated adoption by references in a single regulation, consider simply cross referencing that regulation as those adoptions are referred to in later regulations.

There were no other comments and the Vice Chair thanked Mr. Kieffer for his presentation.

Mike Tate, Kansas Department of Health and Environment, Bureau of Water, was recognized by the Vice Chairman, to review the proposed rules and regulations noticed for hearing in KAR 28-16-28b, definitions; 28-16-28c, general provisions; 28-16-28d, surface water use designation and classification; and 28-16-28e, surface water quality criteria.

Mr. Tate stated that there were two purposes for modifying the standards as proposed: (1) to make the regulations consistent with the law that was passed in 2001 SB 204; and (2) to adopt a new water register for the state. A memorandum of understanding was entered into with EPA by the state in 2001, when they disapproved a number of the recreational uses for streams and lakes in Kansas. The state agreed that it would do an analysis of these streams over a period of five years and this was started last summer when over 200 were looked at. This adoption puts the state in compliance with the memorandum of understanding.

Upon request by Committee members, Theresa Hodges stated that a complete list of the changes in stream designation would be furnished to the Committee.

Ms. Hodges responded to Committee members' questions on the number of streams that had been completed and if the project was on schedule. She stated that SB 204 had been completed in 2001, 340 were scheduled this year, and at this time all will be completed by 2005 in compliance with the memorandum of understanding.

Replying to questions by Committee members about details on how the streams were reviewed, Ms. Hodges stated that pictures and explanations on the work site for each stream reviewed would be available on the website after July 19.

The Vice Chairman thanked Mike Tate and Theresa Hodges for their appearance before the Committee.

Janis DeBoer, Department on Aging, appeared before the Committee to address the proposed rules and regulations noticed for hearing by the Department on Aging (Attachment 1) KAR 26-11-1, eligibility; 26-11-2, benefit limitations; and 26-11-3, priority of funding.

Ms. DeBoer stated that the funds allocated to the Senior Pharmacy Program were \$1.2 million last year, \$800,000 was spent, and 1,590 individuals benefitted from the program. Questions were raised about the funding for future years. Ms. DeBoer stated that it was her understanding that interest of \$1.2 million had been accrued to provide funding for 2003. She stated that she did understand that funding after 2003 would have to be determined.

Ms. DeBoer continued with review of KAR 26-8-1 (Attachments 2 and 3), definitions; 26-8-2, Eligibility criteria; 26-8-7, maximum expenditures per customer and customer fees; 28-8-8, termination; and 26-8-15, matching funds and the revocation of 26-8-3; 26-8-5; 26-8-6; 28-8-9; 28-8-12; 28-8-13; 26-8-14.

Regarding the Senior Care Act proposed regulations, the Committee members questioned the verification of income process and suggested that there should be some recovery system in place when fraud is discovered. It was also suggested that discrepancies between how liquid assets are looked at between different entities should be studied for fairness. Other informational questions were answered by Ms. DeBoer.

Ms. DeBoer was thanked for her appearance before the Committee.

Mark Stafford, Board of Healing Arts, appeared before the Committee to review the proposed rule and regulation noticed for hearing. KAR 30-64-24, case management. Mr. Stafford stated that the Board licenses different categories of practice, but does not license specialties within those categories. This change will require an individual who wishes to claim a credential by a specialty organization, other than a state licensing agency, to identify the specialty board that granted the credential to the licensee.

There being no questions on point, the Vice Chair thanked Mr. Stafford for his presentation before the Committee.

Afternoon Session

Robin Kempf, Kansas Board of Regents, came before the Committee to review the proposed rules and regulations noticed for hearing (Attachment 4). Revocation of KAR 88-5-1 through 88-5-4 and KAR 88-6-1 through 88-6-3.

She stated these revocations apply to jurisdiction of the ordinances regarding parking, traffic, and bicycles at the University of Kansas. The Legislature amended the Board's authorizing statutes to allow the Board to designate the chief executive officers of the state universities to establish their own rules and policies in these areas.

Ms. Kempf continued with the proposed rules and regulations noticed for hearing regarding GED tests. KAR 88-24-9, eligibility to take GED test; 88-24-2, test score requirements; and revocation 88-24-1a, and 88-24-1. She stated that this change will adjust scoring requirements to be the same as the federal requirements.

Ms. Kempf answered several informational questions from Committee members and was thanked for her presence before the Committee.

Elizabeth Phelps, Department of Social and Rehabilitation Services (SRS), appeared before the Committee to review the proposed rules and regulations noticed for hearing in

Article 61– community mental health centers and affiliated community mental health service providers. KAR 30-61-24, case management.

She stated that these proposed changes include modifying the definition of core duties, the requirement of obtaining a license and completing required training for case managers, relaxing the prohibition against case managers providing other direct services, and changing the average caseload maximum from 25 to 30.

Committee members questioned whether changing the caseload to 30 would be manageable especially in rural areas where more time is spent driving from assignment to assignment. Other questions concerned SRS issuing licenses to case managers and it was felt that a more accurate policy would be a certification or registration list maintained by SRS.

There being no further questions, the Vice Chairman thanked Ms. Phelps for her presentation.

Vice Chairman Neufeld noted that there were several persons who had testimony to present regarding this change. He recognized Sky Westerlund. She summarized written testimony from Carl S. Myers, LSCSW, and Assistant Professor at Washburn University (Attachment 5). She then presented testimony on behalf of the National Association of Social Workers (Attachment 6) which was in opposition to licensing individual case management workers.

Ms. Westerlund answered questions from Committee members concerning her testimony and reasons for opposition to the change. She was thanked for appearing before the Committee.

Before proceeding with other SRS rules and regulations, several members commented that they too, were concerned with the proposal to require licensing of case managers. The members noted that most case managers already are licensees of other regulatory board, particularly of the Behavioral Sciences Regulatory Board, the Board of Nursing, and the Board of Healing Arts. The members wondered what more could be gained by a second license.

Vice Chairman Neufeld recognized Lori Nuebel who appeared before the Committee to review the proposed rules and regulations noticed for hearing by the Department of Social and Rehabilitation Services - Mental Health Treatment and Recovery. KAR 30-60-1, scope; 30-60-2, definitions; 30-60-5, two types of license; requirements; 30-60-6, licensing procedure; compliance surveys; duration and renewal of a license; provisional license; 30-60-7, suspension; revocation of a license; procedure; voluntary surrender; 30-60-8, notice of need of a license; order to cease; appeal; 30-60-10, establishment of a new community mental health center; altered service area; 30-60-11, necessary elements for a proposal to establish a new community mental health center or to realign the service area of one or more existing centers; 30-60-12 approval or disapproval of a proposal to establish a new community mental health center or to realign the service area of one or more existing centers; 30-60-13, responsibility for compliance; 30-60-14, departmental assistance;

cooperation with compliance monitoring; 30-60-15, access; identification; information; 30-60-16, no denial of required services; exceptions; requirements; rights, documentation; 30-60-17, prohibition against denial of required services because of an inability or failure to pay; fees; establishment of a schedule of fees; adjustment; disclosure; reviews; collection of fees; 30-60-18, coordination and community involvement; 30-60-19, data and statistical reporting; 30-60-25, governing or advisory board; powers; bylaws; 30-60-26, conflict of interest prohibited; 30-60-27, annual audit; 30-60-28, mission and vision statements; strategic plan; coordination with quality improvement program; 30-60-29, affiliation agreement; notice to secretary of a center's refusal to enter into; investigation and recommendations; no agreement imposed; 30-60-40, personnel; 30-60-41, personnel policies and procedures; 30-60-45, administrative records; 30-60-46, clinical records; 30-60-47, confidentiality and release of information; 30-60-48, behavior management; 30-60-49, transportation; 30-60-50, statement of rights; distribution; adherence to; 30-60-51, complaints; review; appeals; procedures; records; 30-60-55, quality improvement program; records; 30-60-56, risk management program; records; 30-60-57, utilization review program; records; 30-60-60, revoked; 30-60-61, revoked; 30-60-62, basic service delivery standards; service components; 30-60-63, timeliness of response; requirements; documentation when unable to comply; referral to quality improvement program; 30-60-64, required basic community support services; 30-60-70; optional services; 30-60-71, alcohol and substance abuse services; 30-60-72, acute care services; 30-60-73, partial or day hospitalization services; 30-60-74, residential treatment services; 30-60-75 revoked; 30-60-76, research programs; 30-61-1, scope; 30-61-2, definitions; 30-61-5, annual contracts; application; plan for compliance; term; 30-61-6, preference for licensed service area center; secretary's right to contract with another licensed center; 30-61-10, screening and gatekeeping services; 30-61-11, liaison services; 30-61-15, enhanced community support services, and 30-61-16, revoked.

Ms. Nuebel stated that the process of updating these regulations began two years ago. Many of the changes are basically updating and simplifying language and do not change the policy of the regulations. There were several questions concerning the makeup of governing or advisory boards and the requirements for board membership. There was some concern that setting forth criteria for board membership might not be in the best interest of local communities. Other questions concerned broadening the definition of consumer and the ramifications this definitional change would have on patient confidentiality and the release of information.

Committee members had questions concerning the guidelines set up for timely responses to request for services and commented whether this could be viewed as an attempt to micro-manage the centers and professionals.

Staff noted that, since reference was made to guidelines in KAR 30-60-40, the guidelines should be set forth in the regulations. Staff also noted that the history section should be updated.

There being no further questions, Vice Chairman Neufeld thanked Ms. Nuebel for her presentation before the Committee.

The Vice Chairman recognized David Wiebe, Executive Director, Johnson County Mental Health Center, appearing on behalf of the Association of Community Mental Health Centers in Kansas (Attachment 7). Mr. Wiebe noted several concerns that community mental health centers have regarding the volume of the rules that must be adhered to and the specificity of the licensing rules and regulations being proposed. In response to questions from Committee members as to whether the revisions of these rules and regulations were necessary, Mr. Wiebe stated that periodically it is necessary to update because of changes in circumstances. He was thanked for his testimony before the Committee.

Christopher Tymeson, Department of Wildlife and Parks, appeared before the Committee to speak to the proposed rules and regulations noticed for hearing. KAR 115-2-1, amount of fees; 115-2-2, motor vehicle permit fees; 115-2-3, camping, utility, and other fees; 115-7-1, fishing; legal equipment, methods of take and other provisions; 115-7-2, fishing, general provisions; 115-7-7, fishing, Missouri River license requirements; 115-13-3, field trail permit; small game; 115-13-4, field trail permit; furbearers and coyotes, 115-17-11, commercial harvest of fish; legal equipment and taking methods, general provisions, identification tags, and identification tag fee; 115-17-12, commercial harvest of fish; legal species, seasons, size restrictions, daily limits, and possession limits; 115-17-13, commercial harvest of fish; state of Missouri commercial fishing permit; 115-18-13, dark geese; management units, permits, and restrictions; and 115-18-14, nontoxic shot; statewide.

Mr. Tymeson noted that fees for resident commercial guide permits were being reduced while fees were increased for motor vehicle permits and camping permits. Changes in KAR 115-7-1, 2, 7, 17-11, 12, and 13 all relate to fishing in the Missouri River and are proposed to cooperate with the Missouri Department of Conservation to standardize the regulations for persons fishing on the river.

There were no questions concerning these changes and Mr. Tymeson was thanked for his presentation.

Joe Moreland appeared and spoke to the proposed rules and regulations noticed for hearing by the Board of Emergency Medical Services. KAR 109-5-1, continuing education; and 109-6-3, attendant certification expiration and renewal.

Mr. Moreland stated that these changes concern the initial certification and continuing education requirements and make them simpler and easier for all.

Staff noted that some of the history section needed to be updated because of the passage of 2002 HB 2665.

There being no further questions or comments, Mr. Moreland was thanked for his appearance before the Committee.

Vice Chairman Neufeld welcomed Deletria L. Nash, who appeared for the Kansas Insurance Department to review the proposed rules and regulations noticed for hearing (Attachment 8). KAR 40-1-49, stop loss or excess loss insurance; policy standards.

Rich Huncker of the Kansas Insurance Department explained to the members what stop loss insurance coverage consists of and the reason for the change in the rule and regulation.

There were no questions and the Vice Chairman thanked Ms. Nash and Mr. Huncker for their appearance before the Committee.

Mary Blubaugh came before the Committee to speak to the proposed rules and regulations noticed for hearing by Kansas State Board of Nursing (Attachment 9). KAR 60-3-110, unprofessional conduct; 60-3-112, exempt license; 60-9-105, definitions; 60-9-107, approval of continuing nursing education; and 60-11-121, exempt certificate.

Ms. Blubaugh, Ms. Glynn, and Ms. Brown responded to informational questions from Committee members. Vice Chairman Neufeld thanked them for their presentation.

Vice Chairman Neufeld noted that action was needed on minutes for the May 31, 2002 meeting. *Representative Pauls moved, seconded by Representative Holmes that the May 31st minutes be approved as written. The motion carried.*

COMMENTS ON PROPOSED RULES AND REGULATIONS

Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning air quality and surface water quality standards. After discussion, the Committee had no comment regarding the air quality proposals and the following comment concerning surface water quality standards.

- General Comment. Once a document has been adopted by reference, later referrals to that document can be made by a simple cross reference to the regulation in which the adoption is made.

Department on Aging. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning the Senior Pharmacy Assistance Program and the Senior Care Act. After discussion, the Committee expressed the following comment.

- KAR 26-11-1 through 3. Senior Pharmacy Assistance Program—no comment.

- General Comment. Regarding the Senior Care Act, the Committee suggests the Department consider the following: developing and using a more stringent method of verifying assets and the establishment of a threshold for the value of real property in determining income eligibility. Additionally, the Department should explore, with the Legislature if necessary, the possibility of recovering its investment upon the termination of services to a client if there is a finding of fraud or misrepresentation on the part of the client.

Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning dishonorable conduct. After discussion, the Committee had no comment.

Board of Regents. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning GED eligibility requirements and traffic and parking. After discussion, the Committee expressed the following comment.

- KAR 88-24-1. Rewrite subsection (b)(1) to exclude emancipated minors.

Department of Social and Rehabilitation Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning developmental disabilities case management and community mental health centers and affiliates. After discussion, the Committee expressed the following comment.

- General Comment. Regarding Community Developmental Disability Organizations, the Committee suggests that case managers not be licensed as the licensing concept as employed in Kansas statutes envisions legislative action (see KSA 65-5001 *et seq.*) and the existing law cited by the Department relates to community mental health center licensing, not individuals (case managers); rather, if there is some need to be able to identify qualified persons, the Department might consider creation of a registry, for example, that would contain the names of persons who have met the criteria for case managers as determined by the Department.
- General Comment. Concerning community mental health centers and their affiliates, the Committee has serious reservation about this body of regulations as no problems were identified that might cause or support the need for the volume and specificity of the proposals as opposed to the existing level of regulation. Further, the Committee suggests that the Department give careful consideration to the comments of the providers at the public hearing on these proposals as they relate to issues concerning client complaints, service time frames, board membership, detailed employment policies, and other comments that question the need for this new level of regulation. Finally, the Committee suggests that the Department review and incorporate those parts of the proposed regula-

tions that might better fit into the contracts the Department enters into with the centers and affiliates.

Department of Wildlife and Parks. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees, fishing, dark geese, and legal shot. After discussion, the Committee had no comment.

Emergency Medical Services Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning initial certifications and continuing education. After discussion, the Committee had no comment.

Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning stop loss insurance. After discussion, the Committee had no comment.

Board of Nursing. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning exempt licenses, continuing education, and unprofessional conduct. After discussion, the Committee had no comment.

The next meeting of the Joint Committee will be August 28, 2002. The meeting was adjourned at 5:15 p.m.

Prepared by Judy Glasgow
Edited by William G. Wolff

Approved by Committee on:

August 28, 2002