

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

October 10, 2011
Room 152-S—Statehouse

Members Present

Representative Carl Holmes, Chairperson
Senator Vicki Schmidt, Vice-chairperson
Senator Oletha Faust-Goudeau
Senator Allen Schmidt
Representative Steve Huebert
Representative Joe Patton
Representative Jan Pauls
Representative Caryn Tyson
Representative Valdenia Winn

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Sharon Wenger, Kansas Legislative Research Department
Nobuko Folmsbee, Office of the Revisor of Statutes
Ken Wilke, Office of the Revisor of Statutes
Katherine McBride, Office of the Revisor of Statutes
Eunice Peters, Office of the Revisor of Statutes
Judy Glasgow, Committee Assistant

Conferees

Tom Hawk, Kansas Behavioral Sciences Regulatory Board
Terry Tracy, Kansas Department of Labor
Anne Haught, Kansas Department of Labor
Fred Greenbaum, Kansas Self Insurers Association
David Barfield, Department of Agriculture, Division of Water Resources
Jean Boline, Board of Technical Professions
Joe Moreland, Board of Emergency Medical Services
Scott Gates, Kansas State Treasurer's Office
Chris Tymeson, Kansas Department of Wildlife, Parks and Tourism
Timothy Keck, Kansas Department of Health and Environment
Aaron Dunkel, Kansas Department of Health and Environment

Others Present

Sean Miller, Capitol Strategies
Chad Austin, KTTIA
Matt Craig, KSIA
Derek Hein, Hein Law Firm
Mary Leigh Dyck, Kansas Board of Technical Professions

John House, Kansas Board of Emergency Medical Services
Kari Bruffett, Kansas Department of Health and Environment
Christine Mennicke, Kansas Department of Health and Environment
Page Routhier, Hein Law Firm
Nancy Ulrich, Kansas Department of Health and Environment

Morning Session

The first morning session was called to order at 7:05 a.m. by Chairperson Holmes. The purpose of this portion of the morning meeting was to discuss the response to the Committee's comments on the proposed rules and regulations of the Behavioral Sciences Regulatory Board dealing with addiction counselors. These rules and regulations were reviewed by the Committee during its August 29, 2011, meeting.

The Chairperson called upon Tom Hawk, Executive Director, Kansas Behavioral Sciences Regulatory Board, who made comments with regard to the hearing and discussion of the proposed rules and regulations which occurred at the public hearing on the proposed rules and regulations. The Executive Director indicated the proposed rules and regulations were approved by a 6-4 vote, but noted there still appeared to be statutory issues relating to the length of time of supervised work in order to practice as an addiction counselor and an additional requirement of training for those individuals who have a bachelor's degree yet wish to practice addiction counseling. He stated the long-term solution to the issues would be changes in the legislation.

The Chairperson recognized Gary Price, Chairperson, Behavioral Sciences Regulatory Board ([Attachment 1](#)). Dr. Price's testimony outlined the requirements for becoming a licensed addiction counselor under the current law.

Distributed to the Committee were copies of comments on the issue of addiction counseling from Fort Hays State University, Washburn University, and Emporia State University ([Attachment 2](#)). In addition, an e-mail correspondence from a member of the Kansas Behavioral Sciences Regulatory Board was distributed ([Attachment 3](#)).

Additional comments and answers to questions were given by Dr. Dan Petersen of Washburn University and Dr. Jodie Brooks of the KU School of Social Work.

After discussion, the Committee directed staff to draft a letter to the Executive Director of the Behavioral Sciences Regulatory Board asking the Board to consider the extension of the current temporary rules and regulations regarding addiction counselors and that the Board "strongly consider" meeting with all interested parties in an attempt to reach a compromise, which may include amendments to the current legislation.

The meeting was recessed until the regularly scheduled meeting at 10:00 a.m.

Chairperson Holmes called the meeting back to order at 10:00 a.m.

The Chairperson asked for Committee action on the minutes of August 29, 2011, and September 26, 2011. *Representative Pauls moved that both sets of minutes be approved as presented: Representative Huebert seconded the motion. The motion carried.*

Chairperson Holmes recognized Dr. Terry Tracy, Medical Administrator, to address the proposed rule and regulation noticed for hearing by the Department of Labor ([Attachment 4](#)). KAR 51-9-7, fees for medical and hospital services.

Dr. Tracy stated the fee schedule is revised as necessary at least every two years by the Director of Workers Compensation to assure that the schedule is current, reasonable, and fair. A Committee member asked why the agency was using the average wholesale price of drugs (AWP) as a guide, since it was discontinued as of the middle of September. Dr. Tracy and Anne Haught were not aware it was no longer available and stated that the Department would check into this.

Anne Haught was welcomed by the Chairperson to speak to the proposed rule and regulation noticed for hearing by the Department of Labor. KAR 51-3-8, pretrial stipulations.

Ms. Haught said this proposed rule and regulation was the result of HB 2134 passed by the 2011 Legislature. The language does not extend benefits but clarifies existing language.

It was suggested by a Committee member that item (5) needs to be clarified. A Committee member noted that item (10) should state that the application for a hearing is timely filed, rather than a claim made.

Mr. Fred Greenbaum, Kansas Self-Insurers Association, was recognized by the Chairperson to speak in favor of the proposed changes in KAR 51-3-8 and to offer some changes that would make the proposed legislation be more effective ([Attachment 5](#)).

Vice-chairperson Schmidt informed Mr. Greenbaum he would need to present these changes at the time of the public hearing so they could be considered by the agency and the public. Mr. Greenbaum stated he would do this.

The Chairperson welcomed David Barfield, Chief Engineer, to address the proposed rules and regulations noticed for hearing by the Department of Agriculture, Division of Water Resources ([Attachment 6](#)). KAR 5-16-1 definitions; KAR 5-16-3, establishing a flex account; and KAR 5-16-5, maximum annual quantity of water authorized by term permit.

Mr. Barfield stated the proposed changes to the regulations were authorized by SB 124 during the 2011 Legislature. These changes were approved as temporary rules and regulations on August 29, 2011, in order for water users to use flex accounts to save irrigated crops. Mr. Barfield also stated the agency is drafting a bill to be considered by the 2012 Legislature to make more substantial changes to the flex account provisions of the Kansas Water Appropriation Act.

Staff noted in KAR 5-16-1, page 2, (3) that 2011 SB 125, Section 25, the water right conservation program, is not included in the Water Appropriation Act and so should be listed as separate authority for the rule and regulation. Also, some legislation would be needed to correct this during the 2012 Legislative Session. Staff noted in KAR 5-16-5, the term "actual, legal annual water use of the base water right" is used several times and there needs to be a clarification of exactly to what this is referring. In response to a question by a Committee member, Mr. Barfield stated the authority to establish the drought emergency permits is under KSA 82a-708c. A Committee member suggested a letter be sent to all users of the flex account in the first week of January stating how much they would be able to use in the current year without incurring a penalty. Mr. Barfield stated they would attempt to do this in January. The Committee had some concerns about penalties being levied by the groundwater management

districts if they would go over the allowed usage. Mr. Barfield stated that groundwater management districts cannot levy fines; only the Division of Water Resources can do so.

Jean Boline, Executive Director, was welcomed by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Board of Technical Professions. KAR 66-7-1, applications; KAR 66-9-7, educational standard acceptable to the board for reciprocity applicants; KAR 66-10-1, architectural experience of a character satisfactory to the board; KAR 66-10-3, architectural experience required of a reciprocity applicant; and KAR 66-12-1, minimum standards for the practice of land surveying.

Staff asked about the language in the statute referring to licenses, certificates and registrations. Ms. Boline stated the term “certificates and registration” was obsolete language and the Board was looking at this statute for possible changes. In response to a question from a Committee member, Ms. Boline stated there is no regulation that states the amount of the fees, and the statute establishes only a maximum fee amount.

The Committee members said they believe the fees should be listed in a regulation so they can be accessed by the public. It was the Committee’s consensus that a copy of the letter expressing this should be sent to the Attorney General’s office for its information.

Chairperson Holmes recognized Joe Moreland to speak to the proposed rules and regulations noticed for hearing by the Board of Emergency Medical Services. KAR 109-3-3, emergency medical responder; authorized activities; KAR 109-3-4, emergency medical technician; authorized activities; and KAR 109-3-5, advanced emergency medical technician; authorized activities.

In KAR 109-3-3, page 5, (j), a Committee member questioned whether the “do-not-resuscitate” order was in a statute and if there was a form available. Mr. Moreland stated it was and would provide the reference number. Staff noted that in the same paragraph the term “medical reasons” should be changed to “health care decisions.” A Committee member expressed concern about having a list of items the emergency medical responder could perform, and if there was a chance something had been omitted, and, thus, hamper the care received.

A Committee member noted that on the Medication Lists item 6 after KAR 109-3-3, items 5 and 11 after KAR 109-3-4, and items 8 and 26 after KAR 109-3-5, need to be amended under the medication column to note that the patient provides the medication and the emergency responder only assists in providing the dose. Staff noted, in KAR 109-3-4, page 1, (a) needs to be clarified to indicate what is allowed after the transition to new certifications has taken place. This also would apply to KAR 109-3-5, page 1, (c). Staff noted the board needs to determine if it needs to change the statute to remove the term “endotracheal intubation” after the transition. Staff noted the history section should be amended to include additional references.

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

Afternoon Session

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

Chairperson Holmes welcomed Scott Gates, General Counsel Kansas State Treasurer's Office, to address the Committee regarding the proposed rule and regulation heard by the Committee on June 29, 2010 ([Attachment 7](#)).

Mr. Gates stated the regulation was revised after the public hearing. The regulation was finalized on December 30, 2010, during the final days of Treasurer McKinney's term in office.

He said a draft of the response to Committee concerns was prepared for Treasurer McKinney, which was not finalized before his last day on January 7, 2010. Mr. Gates apologized for the failure to communicate these changes to the Committee.

Chris Tymeson, General Counsel, was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Wildlife, Parks and Tourism Commission. KAR 115-2-2, motor vehicle permit fees; KAR 115-7-3, fish; taking and use of bait fish or minnows; KAR 115-7-6, fishing; bait; KAR 115-7-10, fishing; special provisions; KAR 115-8-6, fishing, fish bait, and seining; KAR 115-8-12, stocking or releasing of wildlife; and KAR 115-30-13, removal of vessels from waters of the state.

A Committee member requested the Department review the Economic Impact Statement after April to see if the fees generated from KAR 115-2-2 are in line with the Economic Impact Statement presented with one regulation. In KAR 115-7-3, (e) it was suggested by a Committee member that the second sentence "If taken on a flowing stream or river" be clarified. A Committee member asked in KAR 115-8-12, (d), why the words "rules and" were deleted. Mr. Tymeson stated the Department of Administration had deleted them. The Chairperson directed a copy of the letter to the agency be sent to the Department of Administration with a note asking the representative of the agency to come before the Committee and explain the reasons for the deletion.

Chairperson Holmes welcomed Timothy Keck, Deputy Chief Counsel Kansas Department of Health and Environment (KDHE), to address the Committee on KAR 28-29-1a originally heard by the Committee on August 29, 2011 ([Attachment 8](#)).

Mr. Keck stated KDHE has committed to complete the process of re-drafting all the regulations referred to in KAR 28-29-1a. The attachment provided by the agency sets forth the expected completion date for each of the regulations that are to be updated.

A Committee member requested a copy of the letter be made a part of the previous testimony presented to the Committee because of the timeline set forth. The Committee had several questions about the process and asked if there was any way the agency could move up the timetable on some of the rules and regulations that have four-year completion dates. Mr. Keck stated he would work with the advisory boards to set these in motion. Staff asked how the regulated community would know KAR 28-29-1a exists and where they would be able to find it. Mr. Keck stated program employees are working with the regulated community and keeping them informed. He stated KAR 28-29-1a would be placed in the front of the regulation book. It also was suggested a note referring to KAR 28-29-1a be made directly on any appropriate application.

Aaron Dunkel, Deputy Secretary, KDHE, was recognized by the Chairperson to address the Committee concerning KAR 28-31-10, which was originally heard by the Committee on August 29, 2011 and which dealt with increases to fees dealing with hazardous wastes ([Attachment 9](#)).

Mr. Dunkel stated the Department expects to have funds to operate the hazardous waste program through July 2013. Mr. Dunkel stated staff of the agency also will be looking at reducing administrative costs.

The Committee suggested staff of the agency look at the cash flow and see what fee increases will be needed for fiscal year 2013 and communicate this information to the budget committees during the legislative session.

The Chairperson directed staff to send a letter to the Office of the Repealer requesting he address the Committee. The next meeting will be November 21, 2011.

The Chairperson asked the Legislative Research staff how many agency guidelines had been received. Raney Gilliland stated he had received three or four. The Chairperson directed him to contact the agencies and remind them to forward these to the Legislative Research Department.

The Chairperson adjourned the meeting at 2:30 p.m.

Prepared by Judy Glasgow
Edited by Raney Gilliland and Jill Shelley

Approved by Committee on:

November 21, 2011
(Date)

COMMITTEE COMMENTS ON PROPOSED RULES AND REGULATIONS

Kansas Department of Agriculture, Division of Water Resources. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning Definitions; establishing a flex account; and maximum annual quantity of water authorized by term permit. After discussion, the Committee had the following comments.

KAR 5-16-1. The Committee suggests review of this regulation and others in this set to determine if reference to a water right conservation program pursuant to L. 2011, Ch. 89, sec. 25 should be included in the content of the rule and regulation because L. 2011, Ch. 89, sec. 25 (2011 SB 125 sec. 25) was not made a part of the Water Appropriation Act and, as such, is not covered by the authorization section KSA 82a-706 in the history. Nor have any rules and regulations been adopted pursuant to subsection (e) of L. 2011, Ch. 89, sec. 25 (2011 SB 125 sec. 25) which establishes such water right conservation program.

KAR 5-16-5. The Committee notes the phrase “actual, legal annual water use” is used several times in this rule and regulation. The Committee questions whether that phrase actually means the amount of water authorized under the water right or the amount of water actually used.

Kansas Department of Labor. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning fees for medical and hospital services. After discussion, the Committee had the following comment.

KAR 51-9-7. The Committee is concerned that the agency is using the AWP (the Average Wholesale Price) for drugs, but is no longer being used or updated. Please consider appropriate alternatives.

Kansas Department of Labor. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning pretrial stipulations. After discussion, the Committee had the following comments.

KAR 51-3-8. The Committee believes that the use of the phrase “repetitive trauma” is confusing when standing alone and could be clarified by adding “when determined by a physician” or words to that effect. The Committee questions the need for (a)(10) and suggests its replacement with a question as to whether the application for a hearing was filed on a timely basis.

Kansas State Board of Technical Professions. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning applications; educational standard acceptable to the board for reciprocity applicants; architectural experience of a character satisfactory to the board; architectural experience required of a reciprocity applicant; and minimum standards for the practice of land surveying . After discussion, the Committee had the following comment.

KAR 66-7-1. In paragraph (b), the verification is of a current active “license by reciprocity.” The Committee is concerned that this may not apply to those who

may be “certified” or “registered” in other jurisdictions as contemplated by K.S.A. 74-7024. The Committee is concerned that actual fees are not established by rules and regulations and suggests the agency pursue rules and regulations to accomplish this. (A letter from the Committee will be sent to the Attorney General making this suggestion.)

Kansas Department of Wildlife and Parks. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning motor vehicle permit fees; fish, taking and use of bait fish or minnows; fishing, bait; fishing, special provisions; fishing, fish bait, and seining; stocking or releasing of wildlife; and removal of vessels from waters of the state. After discussion, the Committee had the following comments.

KAR 115-2-2. The Committee requests further detail on the economic impact of the changes in the motor vehicle permit fees, for example, how the increase is expected to affect attendance.

KAR 115-7-3. The Committee is concerned that the rule and regulation does not speak to the transportation of the wild-caught bait fish from a stream basin to a pool or pond. Please clarify.

KAR 115-8-12. In subsection (d), the Committee is concerned about the striking of the words “rules and.” The phrase “rules and regulations” is a defined term in the Rules and Regulations Filing Act, and the Committee would like to know the rationale for the elimination of these words. (The essence of this comment will be included in a letter from the Committee to the Department of Administration.)

Kansas Board of Emergency Medical Services. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning emergency medical responder, authorized activities; emergency medical technician, authorized activities; and advanced emergency medical technician, authorized activities. After discussion, the Committee had the following comments.

KAR 109-3-3. In subsection (j), in the context of a durable power of attorney, the Committee suggests the use of the phrase “health care decisions” rather than “medical reasons.” Also in subsection (j), the Committee suggests a statutory citation referencing “do-not-resuscitate orders.”

Concern. The Committee is concerned that in each of the rules and regulations reviewed containing an Emergency Medical Responder Medication List, such list refers to certain medications which are patient-assisted only. The Committee believes clarification should be made to indicate that the medication is already in the possession of a patient when the emergency occurs.