

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

Room 152-S—Statehouse
Monday, November 21, 2011

Members Present

Representative Carl Holmes, Chairperson
Senator Vicki Schmidt, Vice-Chairperson
Senator Oletha Faust-Goudeau
Senator Ralph Ostmeyer
Senator Tim Owens
Senator Allen Schmidt
Representative Steve Huebert
Representative Joe Patton
Representative Jan Pauls
Representative Ed Trimmer
Representative Caryn Tyson
Representative Valdenia Winn

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Chris Sevedge, Kansas Legislative Research Department
Nobuko Folmsbee, Office of the Revisor of Statutes
Ken Wilke, Office of the Revisor of Statutes
Eunice Peters, Office of the Revisor of Statutes
Gary Deeter, Committee Secretary

Conferees

Tom Conley, Section Chief, Radiation and Asbestos Control Section, Bureau of Environmental Health, Kansas Department of Health and Environment
Linden Appel, Chief Legal Counsel, Kansas Department of Corrections
Carolyn Eckhart, Accountant II, Kansas Department of Corrections
Dennis Taylor, Secretary, Kansas Department of Administration
Sarah Byrne, Assistant Attorney General, Kansas Department of Revenue
Leslie Allen, Credentialing Specialist, Behavioral Sciences Regulatory Board
Tom Hawk, Executive Director, Behavioral Sciences Regulatory Board
John Wine, Staff Attorney, Kansas Insurance Department
Kathleen Selzler Lippert, Executive Director, Kansas Board of Healing Arts
Erica Haas, Attorney, Governor's Grants Program, Kansas Department of Administration
Walter Way, Chairman, 911 Coordinating Council

Others Attending

See attached list.

Morning Session

The Chairperson called the meeting to order at 10:07 a.m.

The Joint Committee on Administrative Rules and Regulations (JCARR) minutes for October 10, 2011, were unanimously approved. (Motion by Senator Owen and seconded by Senator Faust-Goudeau)

The Chairperson recognized Tom Conley, Section Chief, Radiation and Asbestos Control Section, Bureau of Environmental Health, Kansas Department of Health and Environment, who presented proposed new rules and regulations regarding radon measurement, mitigation and laboratory analysis (KAR 28-35-600 through 609); the rules and regulations are the agency's response to SB 531 establishing certification for radon technicians. Responding to questions, Mr. Conley responded thus:

- Acknowledging that reciprocal certification is not mentioned in the statute, Mr. Conley stated he would discuss the issue with the Attorney General.
- Certification will be granted to an out-of-state technician seeking Kansas certification if his previous state certification is equal to Kansas requirements for certification.
- The nationwide general standard for passing a certification test is 70 percent.
- The test for radon mitigation is more detailed and difficult than the test for radon measurement.
- The certification tests are closed-book, although the rule and regulation does not specify how the tests are to be administered.
- Although the rules and regulations were to be in place by June 2011, other agency priorities delayed developing the regulations.

Ken Wilke, Office of the Revisor of Statutes, noted the Kansas Supreme Court has ruled all rules and regulations derive their authority from the statute and cannot be established outside statutory parameters.

Linden Appel, Chief Legal Counsel, Kansas Department of Corrections, reviewed proposed agency amendments to rules and regulations related to reporting requirements (KAR 44-11-111, *et seq.*). He explained that streamlining the reporting requirements will lessen the reporting burden for local programs. Mr. Appel and Carolyn Eckhart, an agency accountant, replied to questions:

- The "governing authority" (KAR 44-11-123 (b)) refers to a county or group of counties.

- The change in KAR 44-11-127 (d) clarifies that community corrections refers to adult services only.
- Carryover funds can be used to start new services, but the agency tries to make grant recipients aware that, if those services are continued the following year, there will be no additional funding to continue those services.

Members expressed concern that new services will create expectations beyond the original grant funding. Mr. Wilke suggested the term “governing authority” be more clearly identified in the regulation.

Dennis Taylor, Secretary, Kansas Department of Administration, appeared before the Committee to report on the findings of the Office of the Repealer. Noting he had completed a tour of Kansas communities to discuss obsolete or irrelevant laws, he stated about 500 recommendations were suggested by Kansas citizens, many of which are duplicated among the 410 recommendations listed on the Repealer website. A sampling includes:

- Eliminate the Kansas Universal Service fees;
- Eliminate the Kansas Racing Commission;
- Revoke the statutory language allowing primary enforcement of the Kansas seat-belt law;
- Repeal the tax exemption for churches;
- Repeal the death penalty;
- Allow same-sex marriage;
- Bring Kansas agency rules and regulations into conformity with federal regulations; and
- Harmonize Kansas laws regarding custom cutters with those of Oklahoma and Nebraska.

Secretary Taylor responded to Committee members’ questions, stating he will evaluate all suggestions, consult with appropriate agencies for their recommendations, and ultimately present a packet of recommendations to the Governor. The JCARR will have opportunity to discuss the packet, or it may be presented to the Legislature as a repealer bill. The recommendations will be listed on the website. Members requested a copy of the list. Replying to further questions, Secretary Taylor replied that all rules and regulations, statutes, and Executive Reorganization Orders are being considered for revocation. Because this activity originated from the Executive Branch, the Governor will determine further actions. The activities of the Office of the Repealer will continue beyond the present fiscal year.

The Chairperson requested a further update from the Office of the Repealer following the 2012 Legislative Session.

Sarah Byrne, Assistant Attorney General, Kansas Department of Revenue, commented on rules and regulations (KAR 14-10-6, *et seq.*) proposed by the Division of Alcoholic Beverage Control regarding trade practices. She explained the amendments primarily revise outdated language. Where new regulations are included, they generally reflect changes in federal regulations. She noted KAR 14-10-18 allowing a distributor to buy back liquor is a safety issue primarily aimed at protecting the public from outdated beer or from damaged products. Responding to questions, she said the change from “United States Treasury” to “department of

the treasury” reflects a change at the federal level, and federal memoranda issued usually are general information and do not pre-empt state statutes.

Leslie Allen, Credentialing Specialist, Behavioral Sciences Regulatory Board (BSRB), reported on the proposed revocation of regulations (KAR 102-6-1 through 102-6-12) for Registered Alcohol and Other Drug Abuse Counseling due to the statutory change from registration to licensure. Tom Hawk, Executive Director, BSRB, responded to a concern that rural areas of Kansas have difficulty obtaining qualified individuals to serve the needs of rural regions; he stated the agency wants to be an advocate for good mental health services throughout Kansas. A Committee member stated the Legislature will work with the BSRB on changes that may help address staffing issues.

Afternoon Session

John Wine, Attorney, Kansas Insurance Department, presented proposed revocation of KAR 40-5-7 and a proposed amendment to KAR 40-4-42c (Attachments 1 and 2). He noted KAR 40-5-7 mirrored a statute that has been amended, making the regulation inconsistent with the current statute. He stated KAR 40-4-42c clarifies to whom notice must be given in relation to external review procedures.

Kathleen Selzler Lippert, Executive Director, Kansas Board of Healing Arts, reviewed two proposed regulations. Regarding KAR 100-28a-5, she explained the proposed regulation would make it easier for physician's assistants to meet continuing education requirements through national, state, or local organizations as long as the Board's standards are maintained. She noted the physician assistants association supports the proposed rules and regulation.

Ms. Selzler Lippert also commented on KAR 100-28a-10, saying it would allow discretion regarding interaction between the supervising physician and the physician assistant on patient matters. Ms. Selzler Lippert said the authority for disciplinary action comes from the statute and no specific action is designated by the rule and regulation, since it is patterned after malpractice petitions. She stated “reasonable skill and safety” is purposely vague and is common in the medical profession, where the general term “standard of care” is used in statute and by the medical community for evaluating medical services.

Raney Gilliland, KLRD, distributed a letter from Secretary Taylor responding to a previous letter from the Committee (November 1, 2011) regarding the interchangeable use of “rule,” “regulation,” and “rule and regulation”; the issue originated from the use of the single word “regulation,” rather than the three-word phrase by the Kansas Department of Wildlife, Parks, and Tourism (Attachment 3). Members discussed the issue and agreed to send a letter to the Kansas Department of Administration asking agencies to maintain the tradition of using the term “rules and regulations.”

Erica Haas, Attorney, Governor's Grants Program, Kansas Department of Administration, presented a proposed regulation revoking KAR 1-64-1, since the statutory authority for the regulation has been repealed.

Walter Way, Chairman, 911 Coordinating Council, presented two proposed regulations: KAR 132-2-1, which establishes prerequisites for the selection of the local collection point administrator (LCPA); and KAR 132-4-1, which authorizes the 911 Coordinating Council to assess monetary penalties against providers who fail to comply with provisions of the Kansas 911 Act. Mr. Way noted, after a Request for Proposal (RFP) and bid process, the Kansas

Association of Counties was selected as the LCPA. A member questioned how an RFP could be issued and a contract awarded before the rules and regulations governing the selection were in place.

Mr. Wilke presented a bill draft establishing a certified batterer intervention program; he noted at the Committee's previous meeting, the Kansas Attorney General's office had requested statutory authority to address certain aspects of domestic violence ([Attachment 4](#)). Mr. Wilke reviewed the provisions of the bill. A member questioned the wording of New Section 2 (b) that seems to equate a person and a program. *A motion was made by Senator Vicki Schmidt to make recommended changes in the bill draft and have it brought back to the Committee at its next scheduled meeting on January 3, 2012. After Committee discussion, the motion was withdrawn.*

A motion was made and seconded to introduce the bill draft during the next Legislative Session and to recommend it be assigned to the Senate Judiciary Committee. (Motion by Senator Vicki Schmidt; seconded by Senator Owens) During discussion, it was suggested staff make appropriate changes to the draft to reflect suggestions made by Committee members. The motion passed.

Information was distributed to the Committee from the Kansas Academy of Physician Assistants in support of the proposed regulatory changes affecting physician's assistants ([Attachment 5](#)).

Senator Vicki Schmidt announced the Legislative Coordinating Council had recently selected Jim Miller as the new Legislative Chief Information Technology Officer.

The meeting was adjourned at 2:45 p.m. The next JCARR meeting was scheduled for Tuesday, January 3, 2012, Statehouse.

COMMITTEE COMMENTS ON PROPOSED RULES AND REGULATIONS

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning definitions; general provisions; fees; requirements for radon measurement technician; requirements for radon mitigation technician; continuing education; radon measurement business; radon mitigation business; reciprocity; and renewal of certification. After discussion, the Committee had the following comments.

KAR 28-35-602. The Committee questions the authority of the agency to promulgate fees for reciprocity when there is no statutory authority for reciprocal agreements. Please review and comment.

KAR 28-35-603 and 28-35-604. The Committee believes that the agency should consider clarifying that the exams are "closed book" exams.

KAR 28-35-608. The Committee finds no statutory authorization to allow reciprocal certifications. Where is the agency's authority to establish reciprocity? Please review and comment.

Kansas Department of Corrections. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning definitions; comprehensive plan, comprehensive plan review; local programs; changes in the comprehensive plan, budget, and agency outcomes; prohibition of use of community corrections grant funds; unexpended funds; and use of grant funds to contract for services. After discussion, the Committee had the following comments.

KAR 44-11-121. The Committee suggests moving the word “exist” to after “circumstances” in the new language in subsection (a) for clarity.

KAR 44-11-123. The Committee believes that the use of the terms “community corrections agency,” “corrections advisory board,” and “governing authority” is confusing in this rule and regulation. The Committee notes that these are defined terms but suggests the agency review to determine whether there is a way to simplify this rule and regulation.

KAR 44-11-129. The Committee is concerned with the use of unexpended funds for new services. Such funding for new services may not be maintained over time. The Committee suggests incorporating language to clarify that new services may not be ongoing services.

Kansas Department of Revenue. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning general; defective liquor containers; trade practices; and repurchase by distributor, when allowed. After discussion, the Committee had the following comment.

KAR 14-10-6. The Committee requests that the agency recheck the name of the federal agency cited in the rule and regulation. If the agency needs to update its statutes to reflect the current name of the federal agency, the Committee encourages the agency to seek the statutory change.

Kansas Behavioral Sciences Regulatory Board. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning revocations (registered alcohol and other drug abuse counseling). After discussion, the Committee had no comment.

Kansas Department of Insurance. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning a revocation (related to the Uniform Consumer Credit Code in regard to property insurance). After discussion, the Committee had no comment.

Kansas Department of Insurance. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning standard external review procedures. After discussion, the Committee had no comment.

Kansas State Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning continuing education (physicians' assistants) and supervision and direction, adequacy (physicians' assistants). After discussion, the Committee had no comment.

Kansas Department of Administration. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning a revocation (providers that fail to comply with the provisions of the Wireless Enhanced 911 Act or the VoIP Enhanced 911 Act). After discussion, the Committee had no comment.

911 Coordinating Council. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning LCPA, prerequisites, selection, contract; and delinquent status, penalties. After discussion, the Committee had the following comment.

KAR 132-2-1. The Committee is concerned that the Council selected a Local Collection Point Administrator before this rule and regulation was in place. The Committee believes this timing could risk a legal challenge to the selection. Please comment as to the rationale for this decision and whether the selected entity meets all of the requirements of the proposed rule and regulation.

Prepared by Gary Deeter
Edited by Raney Gilliland

Approved by the Committee on:

January 3, 2012
(Date)